

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

TYRONE GLINN,

Petitioner,

v.

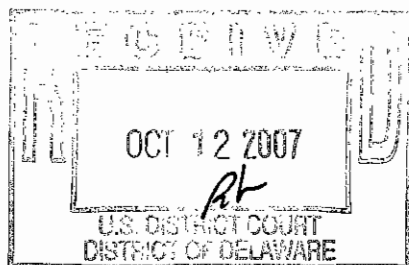
STATE OF DELAWARE,

Respondents.

ID NO. 07-025

BRIEF and Arguments
in
SEPARATE Memorandum

DATE: 12/2007



Judge COPY

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(II). The sole basis for this petition, Petitioner assertion that the Trial Court erred in Refusing to Grant a hearing on whether Appellant's / The Defendant was Denied his Right to "Effective Assistance of Counsel" Granted by the SIX Amendment of the United States Constitution During the Stages of his trial when Counsel filed to Suppenna and cross-exam Defendant witness, pursuant to his "pretrial alibi notice" and further Ineffective on his appeal by failing to follow Rule 26 (A)(i)(c)(ii), (A)(B)(i), (D)(iii) of the DEL. SUPR. CT. R. 26. (2007).

CASE(S):

- CITATIONS -

Whitfield v. STATE OF DELAWARE, SUPER. CT,
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STATE v. GATLIN, 129 SO. 26 4 (LA. 1961). . 13.

CONNECTICAT V. CARPENTER, 570 A.2d AT
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BURKS V. UNITED STATES, 437 US. 1, 11, 18, 98, S. CT.
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COMMONWEALTH V. PETRAS, 368 PA SUPER. 372, 534 A.2d
483 (1987). 21.

STRICKLAND V. WASHINGTON, 466 US. 668, 687, 104 S.
CT. 2052, 2064, 80 L. ED 674, 693 (1984). . . . 22.

- MORE CASE(S) CONTINUE -

RULES: DEL. ST S CT Rule 26[#] (2007). 23.

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NATURE AND STAGE OF PROCEEDINGS

Tyrone Guinn was charged with three counts of Assault in a Detention Facility. (A-4, 5). Counts I and II involved the throwing of bodily fluid on two correction officers. (*id.*) The third count alleged Guinn caused injury to a correction officer. (*id.*) At a jury trial, upon conclusion of the State's evidence, Guinn moved for a judgment of acquittal on all counts. (A-26, 27). The trial court denied this motion as to Counts I and II holding, specific intent may be inferred from the proximity of the guards to Inmate Hill and the nature of the conduct itself. (A-27). The court also denied the motion as to Count III.

At the conclusion of trial, the jury returned a verdict of "guilty" on Count I and "not guilty" on Count III. They were "hung" on Count II and inadvertently informed the Court of their vote which was in favor of the defendant. The Court entered "not guilty" on that count. (A-2).

On July 1, 2005, Guinn was sentenced on Count I to 8 years at Level V suspended after 3 years for 3 years at Level IV suspended after one year for two years Level 3.

This is Defendant's opening brief in support of his petition.

SUMMARY OF ARGUMENT

1. The trial court erred as a matter of law when it denied Guinn's Motion for Judgment of Acquittal on Assault in a Detention Facility, alleged in Count I of the indictment, as the State failed to present sufficient evidence that Guinn intended to strike Officer Shannon with bodily fluid.

2. THE Sole basis For this Petition, Petitioner assertion That the Trial court erred in Refusing to Grant a hearing on whether Appellants / the defendant was Denied his right to "Effective assistance of Counsel," Granted BY the Sixth Amendment of the United States Constitution During the Stages of his trial when Counsel Filed to SUPPona and Cross-Exam Defendant witness, Pursuant to his "Pretrial alibi Notice," and further ineffective on his Appeal BY failing to Follow Rule 26 (A)(i) (C)(i), (A)(B) (iii) of the Del. SUPR. Ct R 26. (2007).

FACTS

In the summer of 2004, nineteen-year-old Tyrone Guinn was detained in super-maximum security at Delaware Correctional Center. On June 30th, 2004, while Guinn was in a recreation yard that resembled a "dog kennel cage," (A-7, 20), Officers Shannon and Stevens escorted Inmate Hill past the yard to the shower. (A-8). Shannon was on Inmate Hill's right, closest to the yard, and Stevens was directly behind Shannon. (A-17, 22).

According to Shannon and Stevens, Guinn and Hill "exchanged some words," (A-8), then Shannon "turn[ed] forward, and just that fast [Shannon] heard just like a splash and [he] was drenched [by fluid]." (A-8). Stevens was also hit by the fluid. (A-15). No one saw who threw it, (A-9, 10, 15-17), nor were any of the officers able to positively identify what container was used to "launch" the fluid. (A-10, 15, 21). Since Guinn was the only one in the yard, he was presumed to be the one responsible. (A-8). According to both Stevens and Shannon, the fluid appeared to be a mixture of feces, urine and other substances. (A-8, 13).

Both Shannon and Stevens testified that they had never had any problems with Inmate Guinn. (A-14, 17). Further, they were both new to the tier so they could not testify as

to whether there was any "bad blood" between Guinn and Hill. (A-10, 14, 19). Shannon wrote in his incident report and testified at trial that Guinn threw liquid at Inmate Hill, (A-11, 13), and that he [Shannon] was not the intended victim (A-11, 12). Stevens also put in his incident report that the fluid was thrown "toward Inmate Hill." (A-17, 18). But, when asked specifically, Stevens testified he did not know who Guinn was trying to hit. (A-17).

After securing Inmate Hill, officers took Guinn out of the yard and placed him in his cell. While the State alleged Guinn intentionally injured Stevens during a struggle, the jury found him "not guilty" of that charge. (A-2). Sergeant Phillips was the supervising officer and obtained information from the officers. He testified that Stevens told him that Guinn had thrown the fluid at Inmate Hill. (A-22, 23). Later that day, Guinn was placed in isolation for 15 days without a hearing. (A-23, 24).

FAC I

(I) ON 5/5/05 COUNSEL SENT SUBPENA(S) TO WITNESSES BY mail (see EXHIBIT A-2) (SUPERIOR COURT CRIMINAL DOCKET), ALSO COUNSEL SENT DEFENDANT LEGAL MAIL, IN RESPONSE TO HIS COMPLAINT, STATING: SHE HAD ISSUED HIS WITNESS WITH SUBPENA(S) (see-EXHIBIT **D***). BUT DURN DEFENDANT TRIAL, SHE FAILED TO CROSS-EXAMINE THEM BEFORE THE COURT AFTER THEY HAD ARRIVED TO TESTIFY ON DEFENDANT BEHAVE ON 5/19/05.

(II) ON 5/20/05 DEFENDANT WAS FOUND NOT GUILTY ON (II) COUNTS OF ASSAULT IN DET. FACILITY BUT FOUND GUILTY ON (I) COUNT. DEFENDANT WAS CONVICTED AND SENTENCE ON 7/1/05. ON 7/13/05 DEFENDANT COUNSEL FILED A TIMELY NOTICE OF APPEAL TO THE SUPREME COURT OF APPEALS, IN LATER WITHOUT NOTICE TO THE DEFENDANT, COUNSEL THEN FILED DEFENDANT APPEAL BRIEF'S ON 8/25/05 AND SENT DEFENDANT HIS COPY OF THE BRIEF APPENDIX ON 10/23/05. WITHOUT FOLLOWING RULE 26(ii)(A)(B)(iii) (see EXHIBIT B-1). SO DEFENDANT HAD NO CHOICE BUT TO FILE A AFFIDAVIT REQUESTING TO PROCEED PRO'SE PURSUANT TO RULE 26(d)(iii) ON OCT. 18, 2005 BECAUSE OF COUNSEL INEFFECTIVE ASSISTANCE OF COUNSEL, (see EXHIBIT B-1). AND WAS COMPLETELY IGNORED BY THE SUPREME COURT WITHOUT A NOTICE TO RE-FILE SUCH MOTION BECAUSE THERE WAS NO PROOF OF SERVICE. DEFENDANT COUNSEL THEN FILED APPELLANT REPLY BRIEF ON DEC. 05 2005 AGAIN WITHOUT DEFENDANT NOTICE. COUNSEL VIOLATED RULE 26* (ii) (B)(iii), and ON 2/28/06 DEFENDANT WAS AFFIRMED ON HIS APPEAL IN THE SUPREME COURT. (see EXHIBIT B-2)

I. THE TRIAL COURT ERRED AS A MATTER OF LAW WHEN IT DENIED GUINN'S MOTION FOR JUDGMENT OF ACQUITTAL ON ASSAULT IN A DETENTION FACILITY, ALLEGED IN COUNT I OF THE INDICTMENT, AS THE STATE FAILED TO PRESENT SUFFICIENT EVIDENCE THAT GUINN INTENDED TO STRIKE OFFICER SHANNON WITH BODILY FLUID.

Standard and Scope of Review

Whether any rational trier of fact, viewing the evidence in the light most favorable to the State, could find the defendant guilty beyond reasonable doubt. *Davis v. State*, 706 A.2d 523, 524 (Del. 1998); *Monroe v. State*, 652 A.2d 560, 563 (Del. 1995).

Argument

Concealed with Jar etc.

There were two Type of Evidence from which the Jury could find the Facts of Defendant(s) case, one was the direct evidence, from Testimony of an eyewitness, The other indirect. Contrary to the State's contention, no witness in this case could positively **Identify** what container was used to "launch" the Fluid that they such claim (see **A*10,15,21**) Fact, Neil Steven claim in his testimony that Defendant had a container in his hand, But Durn his Testimony he was not even sure what Type of Jar it was hem self (**A*28**). First he indicated it was a Peanut Butter container OR maybe a Juice container, and when asked what size it was, ~~he~~ still was not even sure (**A*15**). Then Finally he was not able to present sufficient evidence that if there was ever a such thing in Mr. Guinn hand from the Beginning (**A*19**) that's Required BY DRE Rule 901(A); also see (Whitfield v. State DEL. Supr. Ct, 524 2d 13, 16.) (where, state had failed to adequately trace continuous whereabouts of admitted Shotgun of Robbery, so as to satisfy Authentication Requirements; as far as we know, he could had Given false untrustworthy testimony, simply because he had Fecies on hem, and Farther upset he Never saw who struck hem, (**A*11**), so he testified he saw Mr. Guinn with a Jar etc. in his hand after the incident, when cross-examined BY

Defendant Counsel, was he upset the Fecies had Land on him, he stated:

"not at the time Because he had no idea it was on him until he looked afterward after the incident (A*18)".

in Shannon testimony he claims it was a small Peanut Butter cup Lamin on the Floor That's given to the inmates. (see #A-10).

Then in (2) David p. Testimony he claims it was a Milk carton That was on the Floor at the incident scene (A*21). But again, still theres no such sufficient evidence to Conclue That There was ever a such thing in the in the Begiaing. The State was Required to Adequately Trace it's continuous whereabouts of the alleged Jar etc. That each State witness Claimed Defendant had From the time of the crime or sufficiently link the Claim "Jar etc." to Defendant, or again to the scene of the assault, see Rule 901 (A) That clearly states:

"The Requirement of Authentication or identification as a Condition precedent to admissibility is Satisfied BY evidence Sufficient to Support a Finding That the matter is question is what it's proponent Claims".

The state has Failed to Authenticate the claims

and establish a "Chain of Custody; which in directly establishes The identity and integrity of the evidence by tracing it's continuous whereabouts".

State failed to present Circumstantial evidence, That is, The proof of The Fact or Circumstances from which The existence and non-existences of other Facts That may Reasonably be inferred. nor evidence to show that the alleged Jar etc. shared a unique trait, nor a Direct Link was established Between Mr. Guinn and the alleged weapon such as Finger Print evidence. This such claim Does not meet the Requirements under DFE 901 (A) Authentication or identification Rule, "It's Just not there".

~~ASSAULT~~ on officer Shannon

None of The State witness saw Mr. Guinn throw The Liquid Fecies ^{SEE} (A* EXHIBITS) In Fact, They were not even sure what Type of Container was used to "Launch" The Fluid, (A*10,15,21). Thus no inference can Be drawn with Respect to whether it was thrown Aimlessly, Directed at Inmate hill, Directed at the officers or aimed at some other target.

Example, Durn Mr. Shannon Testimony he Stated he was struck while walkin pass inmate Guinn in Rec. yard 2* (A*10). That's also Directly across Mr. Guinn Cell 9* up the Hallway (A*8). But Later Durn his Testimony he indicated, he was struck across his Back, and all across The Back of his Shirt (A*8). Thus when Cross-exam BY MS. Van Dyke, could he Discribe the hallway?

"The Floors and Door around 3 or 4 Where covered in Fecies" see (A*9).

If he had Been struck on the Rightside in Close proximity From Mr. Guinn That was in Rec. yard 2*, That's Directly across From his cell, where this had a curred accordin to Mr. Shannon (A*10), he and only The Cell, walls, and Floors around That Area Cell 9*, would Be covered in the Fecies, and not Cells 3 or 4, somewhere else Down the Marrol Hallway. The only way fecies could had Land on

The Cell(s) 3 or 4 "AND" walls Down the Hallway, If someone struck him "Directly From Behind" farther up The Hallway, Bringing there Arm, hand out The Cell Door, or Food Flap the opposite way he was walkin, makin The Feces Strike his Back, The Back of his head, walk, and anywhere else Down the hallway, ~~IN~~cluded in cells 3 & 4 in The Fence, simply because he was closes to it. (A-#9) Also Durn Mr. Shannon Testimony, he indicated him self That, he was Struck on his Back, and Back pants Durn Cross-examination BY defendant Counsel (A-#108), and Durn Sgt. Phillips testimony he indicated That when he saw Shannon he simply had Feces Drippin Down from the Back of his head onto his clothin (A-#20). Then he went on to say:

"Steven had it also on the Backside of his pants Leg (A-#20)." But since Mr. Guinn was the only one in the yard he was presumed to Be The one Responsible. When ask Durn examination BY state Attorney: "was there any openings on the Cell Tier That The Feces might would of Came From" (A-#9) only Officer Shannon Responed on the Behave of The Cell Doors without Acknowledged in The Fact That: There were also Food Flaps apart of the Cell Where the inmates Recive meals Through, Thats also located next to every cell door That could

had Been simply still left open from Dinner or Befor Rec. That was not properly secured by an officer when The assault had ocured (see ~~A-19~~ A-19). Fact, when officer Testified, neither officer acknowledged, The concept That There were Food Flaps next to each cell, There is a grate Possibility That it could had Been simply one still left open either from Dinner or Befor Rec. or not properly secured by an officer when the assault had ocured on officer Shannon.

Far as we know, it could of Been pick open by an inmate That was intentionally seekin Revange on the Both of them. Farther, while cross-exaimed by the same Qustion, mr. Shannon indicated:

"There were no openings Just steel iron door's, and There's probably like a vent hole at the Bottom of the doors, But nothing to Reachout or grab anything".

(~~A-19~~ A-19). This is complately upserb, the Lower Part of the Door Does not have any vent holes, and Farther the Lower Part of The Door is about 4 to 5 inches. on Both sides of the Celldoors where You can eazily stick Your hand through and Throw anything of that size out. (see state exhibit 1st and 2nd). example: Durn Mr. Phillips Testimony he stated: "There was also a lot of Fecies by the Door Track and under the door Track. See (~~A-19~~ A-19).

Durn Trial officer Shannon indicated, That inmate Guinn had exchanged some words with inmate Hill, in he thought they was havin a conversation or whatever; and as ~~HE~~ was walkin he was struck with fecies. (A-#8) But Durn Mr. Shannon testimony he nevered indicated nor Mr. Stevens, That The conversation That Both inmates were havin at the time, Befor the crime was committed was a verble Threating argument nor anything of That nature to supect probable cause towards the Both had any problems with each other whatsoever. (A-#8). as Far as we know, They Both could had Been Sharrin a Brief conversation Durn when the Fecies was Simply Thown on officer Shannon. Thus Both officers was new to the Pair so They could not Testify as to whether there was any Bad Blood Beteewn Them two (see A-#14) also see connecticut V. Carpenter, 570 A. 2d At 206 (Conn. 1990), Farther, There were no previous encounters Beteewn either of the officers and Guinn (A-#14) State V. Gatlin, 129 So. 2d 4 (La. 1961), Thus there was no evidence or motive to hit Shannon or of a pattern of adverse behavior toward the officers (see A-#14-A-#17).

Judgement of Acquittal

Finally, The Jury's irrational and inconsistent Verdicts amplify the Trial Court Judge error in denying Guinn motion. Guinn was found "guilty" of Count I, Intentionally striking officer Shannon with Bodily Fluid. (A-2). However, the Jury was "hung" on Count II, which alleged Guinn intended to strike officer Stevens with bodily fluid. (A-2). The Jury inadvertently Revealed to the Court their vote on Count II, which favored the defendant, Thus, The Court entered a verdict of "no guilty" on that Count without objection by the State. (A-2). The Verdicts on Counts I and II demonstrate confusion on the part of The Jurors with respect to applying the State's insufficient evidence to the Law of Specific intent. Specific intent was not supported in this case, Thus it was "error to submit it to The Jury as if the evidence Justified the Determination of the presence of That element." (see Connecticut v. Carpenter 570 A.2d 203, 206 (Conn. 1990). Therefore, a Judgement of acquittal was Required to Prevent an irrational and inconsistent verdict. (see Kornegay v. State, 596 A.2d 481, 487 (Del. 1991). assault in a Detention Facility as alleged in Count I, of the indictment is Defined in: 11 D.C. § 1254(C). See also Monroe v. State 652 A.2d 560 (DEL. Supr. 1995). (When appellate Court overturns Jury's guilty verdict on insufficiently of evidence grounds, Double Jeopardy Clause of United State

and state constitution bar Retrial.") (Burks v. United States, 437 U.S. 1. 11. 18, 98 S. Ct. 2141, 2147, 2150-51, 57 L. ED. 2d 1 (1978)).

The State Failed to prove every element of Cant I "Assault In a Detention Facility beyond Reasonable doubt. See IN Re Winship, 397 U.S. 358, 364 (1970). Because of The State's Failure, The Trial Court Should have Granted Guinn's motion For Judgment of acquittal. Therefore, Guinn's Conviction and Sentance Should Be Reversed.

(**BRIEF** Opening)

Ordinarily, intent is a question for the trier of fact. However, specific intent was not supported in this case, Thus it was "error to submit it to the Jury as if the evidence justified the Determination of the presence of That element". Therefore, a Judgement of acquittal was Required to prevent an "IRRATIONAL and INCONSISTENT Verdicts".

Assault in a Detention Facility as alleged in Count I* of the indictment is defined as Follow: "Any Person who, being Confined in a detention facility, intentionally Strikes with urine, feces or other bodily fluid a Correctional officer or other state employee of a Detention Facility acting in the lawful performance of Duties or any other person at a detention Facility or other place having custody of such person, other than another person Confined at a Detention Facility shall be guilty of a Class 1 Felony." 11 **Ill. C.S.** § 1254 (C). The State originally sought to convict Guinn on Count I under the Theory of Transferred intent, Relying on evidence That Guinn intended to strike inmate Hill but hit officer Shannon instead. (**A#26, 27**). However, The Court Ruled That it was "pretty clear" That Transferred intent can not "Escalate and add a new element to a Charge" of offensive Touching to prove assault

in a Detention Facility (A-25[#]). Thus, The State was Required to establish "an intentional Striking of a Correctional officer see e.g., Kornegay, 596 A.2d 481; notwithstanding the courts Finding that Assault in a Detention Facility is a specific intent offense, (A-25[#]), The Trial Court denied gurn motion (A-27[#]). all Testimony Presented in the State's case was Consistant with Finding no intent to hit a Correctional officer there was "no evideance or any kind which would show, or support the conclusion of a Reasonable mind That [he] harbored the Requisite specific Intent [to hit officer Shannon]

- SEPARATE MEMORANDUM -
BRIEF / ARGUMENT

IT'S BEEN WELL SETTLED:

Federal Courts may not consider the merits or procedurally defaulted claims unless the petitioner demonstrate either cause for the procedural default and actual prejudice resulting therefrom, or that a fundamental miscarriage of justice will result if the court does not review the claim. *Mc Cordless v. Vaughn*, 172 F. 3d 255, 260 (3d Cir. 1999); *Coleman v. Thompson*, 501 U.S. 722, 750-51 (1999); *Caswell v. Ryan*, 953 F. 2d 853, 861-62 (3d Cir. 1992).

To demonstrate cause for a procedural default, a petitioner must show that "some objective factor external to the defense impeded counsel's efforts to comply with the state's procedural rule." *Murray v. Carrier*, 477 U.S. 478, 488 (1986). A petitioner can demonstrate actual prejudice by showing "not merely that the errors at... Trial created a possibility of prejudice, but that they worked to his actual and substantial disadvantage, infecting his entire trial with error of constitutional dimensions".

Alternatively, a Federal court may excuse a procedural default if the petitioner demonstrates that failure to review the claim will result in a fundamental miscarriage of justice. *Edwards v. Carpenter*, 529 U.S. 446, 451 (2000); *Wenger v. Frank*, 266 F. 3d 218, 224 (3d Cir. 2001). In order to demonstrate a "constitutional violation has probably resulted in the conviction of one who is actual

innocence means Factual innocence, not Legal insufficiency. *Bousley v. United States*, 523 U.S. 614, 623 (1998). A petitioner establishes actual innocence by proving that no reasonable juror would have voted to find him guilty beyond a reasonable doubt. *Sweger v. Chesney* 294 F.3d 506, 522-24 (3d Cir. 2002).

II. The sole basis for this Petition, Petitioner's assertion that the Trial Court erred in refusing to grant a hearing on whether Appellants / the Defendant was denied his right to "Effective Assistance of Counsel," granted by the Sixth Amendment of the United States Constitution during the stages of his trial when counsel failed to subpoena and cross-examine Defendant witness, pursuant to his "Pretrial alibi notice" and further ineffective on his appeal by failing to follow Rule 26(a)(2)(C)(i), (A)(B)(iii), (C)(iii) of the Del. Supr. Ct R 26, (2007).

ARGUMENT

21.#

It IS well settled IN,
 To establish INEFFECTIVENESS FOR Failure to Call witness,
 Defendant must Establish That: (1) witness existed;
 (2) witness was Available; (3) COUNSEL WAS INFORMED OF
 Existence OF witness OR COUNSEL should OTHERWISE have
 know OF him; (4) witness was prepared to Cooperate
 and Testify FOR defendant at Trial; and (5) absence
 OF Testimony prejudiced Defendant so as to deny
 him Fair Trial. U.S.C.A. CONST. (See also Commonwealth
 V. Petras, 368 PA. SUPER. 372, 534 A.2d 483 (1987)).

IN This CASE BEFORE The COURT IS, COUNSEL WAS INFORMED
 OF Defendant Existence OF witness ON March 16, 2005
 and Had his witness Interviewed by her Investigator;
 IN FACT, COUNSEL also Indicated That she Had Issued the
 appropriate subpoenas IN her Response Letter to Defendant
 Complaint CORRESPONSE Letter (see exhibit **D***). Further,
 COUNSEL Had Notice OF Defendant EXisted witnesses, she
 subpoenaed witnesses;

(I) DEVAN MILL'S SBI: 00192524

(II) ERNEST MILL SBI: 350002

by Mail, also ON 5/5/05 (see A-2, Superior Court Criminal
 Docket), ON 5/19/05 witnesses (I) and (II) was prepared
 to Cooperate and Testify FOR defendant at Trial.
 Defendant Counsel Later Indicated to defendant DURN
 The proceeding OF Trial That his witnesses will Be
 Called and Cross-EXAM ON 5/21/05, But They were Not
 Called and Cross-EXAM ON That Date to Testify ON

And Thus, CONFIRM The defense's Claim that he did Not Throw such Fees "Intentionally" on the ALleged officer (S) IN his indictment; Finally Provide a plausible version of Contractual Transaction Between The Crime and Victim and the Aftermath. COUNSEL Failed also To Subpena witness (III). Wasley GREENE SBI: 275884, and CROSS-EXAM him as well. Under the STRICKLAND-FRITZ test, defendant Must prove the Following two - Prongs: First, The defendant must show That Counsel Performance was DEFICIENT. This Requires showing That Counsel Made ERRORS so serious That Counsel was Not FUNCTIONING as The "counsel" Guaranteed The defendant by The Sixth Amendment. second, The defendant must show That The deficient performance pre-Judiced The defense, This Requires showing That Counsel's ERR's were so serious as to deprive The defendant of a Fair Trial, a Trial whose Result is Reliable (see STRICKLAND v. Washington, 466 U.S. 668, 687, 104 S. Ct. 2052, 2064, 80 L. ed 674, 693 (1984); (State v. Fritz, 105 N.J. 42, 58, 519 A.2d 336 1987). IF Counsel Had Subpena and CROSS-EXAM ALL his witnesses, The Trial IN his Conviction might would Had Been Different Because of State Lack of Evidence That was already INSUFFICIENT, To have Defendant witness CROSS-EXAM would had very much likely have affected the outcome of the case as it directly Contradicts the Victims testimony, making Defendant Defense Stronger simply Because, "again," his witnessess

Could have provide The sworn testimony of what happen on the Nite Officer Shannon was assaulted By Fecies see (STATE V. PETROZELLI, 796 A.2d 927 May 14, 2002) where "Defendant was entitled to an evidentiary hearin on his Claim of ineffective assistance of Trial Counsel for Counsel Failure to call alleged exculpatory witnesses in trial in which defendant was charged with Theft by Failure to make Required disposition of Property's witnesses, who were either friends, associates, or Relatives of Defendant, provided a plausible Version of Contractual Transaction Between defendant and Victim, and the aftermath". ^{also} see Commonwealth V. Stanley, 534 Pa. 297, 300, 632 A.2d 871, 872 (1993).

even after Counsel for Defendant acted with pre-Judice, so Grievous That Counsel Performance Fell Below an ob]jective standard of reasonableness, Counsel Then took It upon her self to File Defendant Appeal on 8-25-2005 in then Later sent him his appeal copy already filed on 9-23-2005 (see EXHIB. B1). Thus even when defendant Filed a motion for pro'se Pursue to Rule 26(d)(iii) (see exhibit B-1) Defendant Counsel Filed That Appeal to the Supreme Court one Full month when She was suppost to advise The Client of These Rights befor filen it without his Notice (see exhibit B-1-2, of Suprme court). also see Rule DE St S. Ct. R. 26* A-B*, 2007 That Clearly states:

(A) Copy to Client. "supplied The Client with a Copy of the motion and the Brief (B) advise to the

Client, That the Client could state in a writing delivered to the attorney within 30 days, any point that the Client wanted the court to consider, and that such a writing would be included in the Brief. Such statement by the Attorney shall state the date on which the Attorney delivered a copy of the motion and brief to the Client, and whether or not writing was received in response thereto. Nowhere in Defendant Criminal Court Docket it says: "She gave such statement," and it stated the date on which she delivered a copy of the Brief to the Defendant and whether a copy/writing was received in response to see exhibit A-1-2, B-1-2. Defendant counsel was ineffective and knew what she was doing, after the Defendant had filed a pro se motion pursuant to DE. St. S. Ct. Rule (d)(iii) see (exhibit B-2), of the Reply Brief, and exhibit *B-1. If counsel would have followed the Rule 26(b), and had notice client of what she was doing, there would have been any of the above deficiencies, or Affirmed Appeal in Supreme Court, if she would have provided Client with a copy of the Brief before filing it, it would have impacted the outcome also on Defendant "again" Appeal, because if Client did not desire that ground she had placed down to argue, Client would have simply had a right to file pro se. On 2/25/2006 Defendant Appeal was affirmed in the Supreme Court, and his mandate returned with a Denied hearing on Bench see (B-1 and B-3)

Petitioner demonstrate That Failure to Consider the Claims will result in the Fundamental Miscarriage of Justice simply Because:

The Sixth Amendment right to Counsel exists, and is Needed, in order to protect the Fundamental Right to a Fair trial, and the Constitution guarantees a Fair Trial Through the Due Process clauses, Thus the right to Counsel plays a crucial role in the Adversarial System embodied in the Six Amendment, Since access to counsels Skill and Knowledge is Necessary to accord defendants the "ample opportunity to meet the Case of the prosecution" to which They are entitled, *Adams v. United States ex rel. MC. Cann*, 317 U.S. 269, 275, 276, 63 S. Ct. 236, 240, 87 L. Ed. 268 (1942); See *Powell v. Alabama*, *supra*, 267 U.S. at 68-69, 53, S. Ct. 63-64

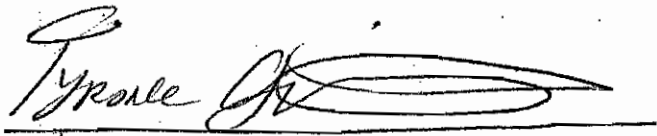
"IN all Criminal prosecutions, the accused Shall enjoy the Right to a Speedy and public trial where in the Crime Shall have been committed by Law, and to be informed of the Nature and cause of the accusation; to be confronted with the witnesses against him; to have Compulsory Process for obtaining witnesses in his Favor, and to have the Assistance of Counsel for his defense". U.S.C.A. Const. Amend. 6; Petitioner also contends that the State courts should have excused his procedural default "in the interest of Justice" and

that their Failure to do so constitutes a
"Substantial miscarriage of Justice."

CONCLUSION

For the reasons and upon the authorities cited herein,
the undersigned respectfully submits that the Defendant's
convictions and sentence must be reversed.

Respectfully submitted,



TYRONE GUINN SEE: 375731

- Exhibit (5) -
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SUPERIOR COURT CRIMINAL DOCKET
(as of 09/22/2005)

Page 1

State of Delaware v. TYRONE L GUINN
 State's Atty: CARI A VAN DYKE , Esq.
 Defense Atty: NICOLE M WALKER , Esq.

DOB: 11/12/1984

AKA: TYRONE H GUINN
 TYRONE H GUINN

Assigned Judge:

Charges:

Count	DUC#	Crim.Action#	Description	Dispo.	Dispo. Date
001	0411013992	IN04111483	ASSLT DET FACIL	TG	05/20/2005
002	0411013992	IN04111484	ASSLT DET FACIL	TNG	05/20/2005
003	0411013992	IN04111485	ASSLT DET FACIL	TNG	05/20/2005

No.	Event Date	Event	Judge
1	11/23/2004	CASE ACCEPTED IN SUPERIOR COURT. ARREST DATE: 11/17/2004 PRELIMINARY HEARING DATE: 112204 BAIL: SECURED BAIL-HELD NO CONDITION	6,000.00 100%
2	11/29/2004	INDICTMENT, TRUE BILL FILED.NO 117 SCHEDULED FOR CASE REVIEW AND ARRAIGNMENT 12/20/04 AT 9:00	
3	12/06/2004	SUMMONS MAILED.	
4	12/20/2004	ARRAIGNMENT CALENDAR - 10-C FILED_BY MCDONALD	
	12/20/2004	CASE REVIEW & ARRAIGNMENT CALENDAR: SET FOR FINAL CASE REVIEW. DATE: 1/18/05 @ 9	BABIARZ JOHN E. JR.
	01/18/2005	FINAL CASE REVIEW: NO PLEA/SET FOR TRIAL 5/19/05	ABLEMAN PEGGY L.
	01/18/2005	ORDER SCHEDULING TRIAL FILED. TRIAL DATE: 5/19/05 CASE CATEGORY: #2 ASSIGNED JUDGE (CATEGORY 1 CASES ONLY): UNLESS THE COURT IS ADVISED WITHIN 2 WEEKS OF THE UNAVAILABILITY OF NECESSARY WITNESSES, THE COURT WILL CONSIDER THE MATTER READY FOR TRIAL. ABSENT EXCEPTIONAL CIRCUMSTANCES, RESCHEDULING OR CONTINUANCE REQUESTS WILL BE DENIED.	ABLEMAN PEGGY L.
6	04/14/2005	DEFENDANT'S LETTER FILED.	

SUPERIOR COURT CRIMINAL DOCKET
(as of 09/22/2005)

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 Defense Atty: NICOLE M WALKER , Esq.

DOB: 11/12/1984

AKA: TYRONE H GUINN
 TYRONE H GUINN

No.	Event	Judge
	TO: LAWRENCE SULLIVAN DEFENDANT WANTS A NEW ATTORNEY ASSIGNED TO CASE.	
7	04/26/2005 SUBPOENA(S) MAILED.	
8	05/05/2005 STATE'S WITNESS SUBPOENA ISSUED.	
9	05/11/2005 TRANSCRIPT FILED. PRELIMINARY HEARING-NOVEMBER 22, 2004 BEFORE COMM.MARY MCDONOUGH	
	05/19/2005 TRIAL CALENDAR- WENT TO TRIAL JURY	JOHNSTON MARY MILLER
10	05/20/2005 CHARGE TO THE JURY FILED.	JOHNSTON MARY MILLER
11	05/20/2005 JURY TRIAL HELD BEFORE JUDGE JOHNSTON 5/19-5/20/05. ON 5/20/05, THE DEFENSE MADE A MOTION FOR A JUDGEMENT OF ACQUITTAL ON ALL 3 COUNTS. THE MOTION WAS DENIED. THE JURY BEGAN DELIBERATIONS ON 5/20/05. THE JURY RETURNED ON 5/20/05 WITH VERDICTS OF: ASSAULT IN A DETENTION FACILITY (1483) GUILTY; ASSAULT IN A DETENTION FACILITY (1484) NOT GUILTY- JUDGE JOHNSTON DECLARED THIS CHARGE NOT GUILTY; THE JURY COULD NOT AGREE ON A VERDICT ON THE CHARGE; ASSAULT IN A DETENTION FACILITY (1485) NOT GUILTY. A FULL PRE-SENTENCE INVESTIGATION IS ORDERED. SENTENCING WILL BE ON JULY 1, 2005 @ 9:30. STATE'S ATTORNEY: CARI VAN DYKE DEFENSE ATTORNEY: NICOLE WALKER COURT REPORTER(S): PATRICIA GANCI/JEANNE CAHILL COURT CLERK(S): MARIE CARUSO/JENNIFER HOUSTON/ANGELA HAIRSTON/ ANTHONY IANNELLI EVIDENCE IS STORED IN THE VAULT	JOHNSTON MARY MILLER
	07/01/2005 SENTENCING CALENDAR: DEFENDANT SENTENCED.	JOHNSTON MARY MILLER
12	07/01/2005 SENTENCE: ASOP ORDER SIGNED AND FILED 7/14/05	JOHNSTON MARY MILLER
13	07/19/2005 LETTER FROM SUPREME COURT TO KATHLEEN FELDMAN, COURT REPORTER RE: A NOTICE OF APPEAL WAS FILED ON JULY 13, 2005. THE TRANSCRIPT IS DUE AUGUST 22, 2005. 313, 2005	
14	08/01/2005 LETTER FROM SUPREME COURT TO COUNSELOR NICOLE WALKER, ESQ.	

SUPERIOR COURT CRIMINAL DOCKET
(as of 09/22/2005)

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ate of Delaware v. TYRONE L GUINN
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 Defense Atty: NICOLE M WALKER , Esq.

DOB: 11/12/1984

AKA: TYRONE H GUINN
 TYRONE H GUINN

No.	Event	Date	Judge
	RE: THE NOTICE OF APPEAL FILED ON JULY 13, 2005. DOES NOT COMPLY WITH SUPREME COURT RULE 7(C)(9). JUDGE JOHNSTON'S JULY 1ST SENTENCING ORDER MUST BE ATTACHED TO THE APPEAL.		
15	TRANSCRIPT FILED. TRIAL-MAY 20,2005 BEFORE JUDGE JOHNSTON AND JURY RPR-JEANNE CAHILL	08/03/2005	
16	TRANSCRIPT FILED. TRIAL-MAY 19,2005 BEFORE JUDGE JOHNSTON AND JURY P.GANNI,RPR	08/17/2005	
17	TRANSCRIPT FILED. SENTENCING-JULY 1,2005 BEFORE JUDGE JOHNSTON P.GANNI,RPR	08/17/2005	
	RECORDS SENT TO SUPREME COURT. 313, 2005	08/23/2005	
18	RECORDS SENT TO SUPREME COURT. 313, 2005	08/29/2005	

*** END OF DOCKET LISTING AS OF 09/22/2005 ***
 PRINTED BY: JDEFDAB

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE

v.

TYRONE GUINN

Defendant.

)
)
)
)
)
)
)

I.D. No. 0411013992

The Grand Jury charges Tyrone Guinn with the following offenses:

COUNT I. A FELONY

IN # 04-11-1483

ASSAULT IN A DETENTION FACILITY, in violation of Title 11, Section 1254 of the Delaware code of 1974, as amended.

TYRONE GUINN, on or about the 30th day of June, 2004, in the County of New Castle, State of Delaware, while being confined in a detention facility, did intentionally strike Officer Shannon with urine, feces, or other bodily fluid, a guard at the facility who was acting in the lawful performance of his duties.

COUNT II. A FELONY

IN # 04-11-1484

ASSAULT IN A DETENTION FACILITY in violation of Title 11, Section 1254 of the Delaware Code of 1974, as amended.

TYRONE GUINN, on or about the 30th day of June, 2004, in the County of New Castle, State of Delaware, while being confined in a detention facility, did intentionally strike Officer Stevens with urine, feces, or other bodily fluid, a guard at the facility who was acting in the lawful performance of his duties.

COUNT III. A FELONY **IN 3 04-11-1485**

ASSAULT IN A DETENTION FACILITY, in violation fo Title 11, Section 1254 of the Delaware Code of 1974, as amended.

TYRONE GUINN, on or about the 30th day of June, 2004, in the County of New Castle, State of Delaware, while being confined in a detention facility, did intentionally cause physical injury to Neil Stevens, a correctional officer acting in the lawful performance of his duties.

1 IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
 2 IN AND FOR NEW CASTLE COUNTY
 3 STATE OF DELAWARE,
 4 Plaintiff,
 5 v. IN04111483
 6 TYRONE L. GUINN,
 7 Defendant.
 8
 9 BEFORE: HONORABLE MARY M. JOHNSTON, J.
 10 and jury
 11
 12 APPEARANCES:
 13 CARI VAN DYKE, ESQ.
 14 DEPARTMENT OF JUSTICE
 15 for the State
 16 NICOLE M. WALKER, ESQ.
 17 OFFICE OF THE PUBLIC DEFENDER
 18 for the Defendant
 19
 20 TRIAL TRANSCRIPT
 21 MAY 19, 2005
 22
 23 PATRICIA L. GANCI, RPR, CRR
 SUPERIOR COURT OFFICIAL REPORTERS
 500 N. King Street, Suite 2609, 2nd Floor
 Wilmington, Delaware 19801-3725
 (302) 255-0653

RECEIVED AUG 18 2005

3

1 Good afternoon, ladies and gentlemen. My name
 2 is Cari Van Dyke. I'm a Deputy Attorney General. I
 3 represent the people of the State of Delaware. This is
 4 my time now to give you an opening statement, which is
 5 basically an introduction to the case, and I'd like to
 6 start by telling you that individuals who commit crimes
 7 and are later convicted of those crimes oftentimes go to
 8 prison. They go to prison because they have chosen to
 9 not abide by the law. Even when the individuals are
 10 incarcerated for those criminal offenses, they choose to
 11 still continue to not abide by the law. So, yes, when
 12 people are incarcerated, they do commit crimes in prison
 13 and the State prosecutes them just as if it had happened
 14 on the city streets.
 15 The defendant in this case is Tyrone Guinn. He
 16 is sitting at the far table next to his attorney. On
 17 June 30th, 2004, Tyrone Guinn was a sentenced inmate at
 18 the Delaware Correctional Center in Smyrna, Delaware.
 19 He was -- as a sentenced inmate, he was secured in
 20 what's called, what we refer to as the SHU. It's the
 21 Secured Housing Unit. It's a super max detention
 22 facility.
 23 While he's at this facility, there are

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 23 -----
 May 19, 2005
 Courtroom No. 8E
 11:45 a.m.
 PRESENT:
 As noted.

 (Whereupon, jury enters the room at 1:51 p.m.)
 THE COURT: Good afternoon, ladies and
 gentlemen.
 Ms. Van Dyke, are you ready to proceed?
 MS. VAN DYKE: Yes, Your Honor. May it please
 the Court.

2

4

1 strict guidelines. As in any prison, there are strict
 2 rules that must be followed not only by the inmates, but
 3 by the correctional officers. And in this super maximum
 4 security prison, there are rules that inmates don't have
 5 contact with other inmates. They are housed
 6 individually. They eat in their cells. They shower
 7 individually. They go to the recreation yard
 8 individually, and they do not have contact with one
 9 another. At all times when they leave their cell or if
 10 they leave the recreation yard, they are escorted by two
 11 guards which are correctional officers.
 12 On June 30th, 2004, Tyrone Guinn at some point
 13 was secured in what's called an interior recreation
 14 yard. It's not outside. It's inside the building, but
 15 it's a yard in which he can exercise, walk around. He's
 16 not cuffed. He uses that yard. And while he's secured
 17 in there alone, not with any inmates, Officer Shannon,
 18 Malcolm Shannon, and Officer Neil Stevens are escorting
 19 another inmate. They are escorting this inmate from his
 20 cell to the shower area. And it's two guards, and this
 21 inmate is also cuffed behind his back as he's walking.
 22 And as they're walking, they're walking down a
 23 very narrow hall, probably about six feet in width. And

17

1 A. As soon as I come in, first thing, probably be
2 briefed by the officers that were there previously, just
3 what went on during the course of the day, anything, you
4 know, just a heads-up for everything. Basically, after
5 that, get a count for all the inmates, make sure
6 everybody's there. From there we go onto feeding. That
7 takes about a half an hour out of our time, 45 minutes
8 out of the time. Then after that, that's when we start
9 recreation, and usually we do about six cells at a time.
10 And between that, that takes about an hour and 45
11 minutes, two hours to go ahead and do two tiers at the
12 same time. And we bring them in for showers, phone
13 calls, if there is something going on, and basically
14 after that, it's just keeping up on our area checks.

15 Q. Okay. Thank you.

16 How are the tiers laid out? You said you have
17 two tiers that you had to supervise on the 30th. Can
18 you explain, are those tiers one on the bottom level,
19 one on the top level?

20 A. Yes. Well, each tier has two levels that has
21 12 cells on each level. And there's only one inmate to
22 each cell.

23 Q. Okay. If you don't mind, to assist the jury,

18

1 with permission of the Court, I'd like to have the
2 officer step down and possibly draw a sketch.

3 MS. WALKER: No objection.

4 THE COURT: All right.

5 BY MS. VAN DYKE:

6 Q. If you don't mind drawing a sketch of the tier
7 layout that you were in charge of on that night, on the
8 30th.

9 A. This is just basically just a bottom level.
10 There's another level that's just like this.

11 Q. This would be the bottom level?

12 A. This is the bottom level tier. When you come
13 in through the sliders, first thing is you have -- cells
14 1 through 10 and 11 to 12 are, like, facing towards the
15 security yard the inmates, they go and have their
16 recreation in. That's fenced in all around them.

17 Q. How many of those are there?

18 A. It's two yards on the inside.

19 Q. Two yards?

20 A. And it's three on the outside. But most time
21 they only use two on the outside, but for the inside
22 there's only two.

19

1 A. There's two.

2 Q. Three on the outside?

3 A. Right.

4 Q. And then you have 12 inmate cells?

5 A. Right, for the bottom level. There's 12 for
6 the top. It's the same format.

7 Q. Okay. And what is the -- it says Yard 2 off to
8 the left. That is the second yard?

9 A. Yeah, that's the second yard. That's how we
10 have to label it.

11 Q. That's all right. No, you're doing very well.

12 Where is Tyrone -- do you know Tyrone Gulnn?

13 A. Yes.

14 Q. Could you please tell the Court where his cell
15 is located?

16 A. His cell at the time was located here, at Cell
17 9.

18 Q. Cell 9. Okay. Why don't you go ahead back and
19 take a seat?

20 Okay. Now, after you drew that diagram, could
21 you please tell the jury what procedures you must follow
22 at all times when moving inmates out of their cell?

23 A. Removing a SHU inmate from the cell, it must be

20

1 two officers present and the inmate must be cuffed from
2 behind at all times. And when leaving the tier, they
3 must be shackled for rec purposes -- recreational
4 purposes. When they go to outside yards, whatever,
5 shackles aren't really needed. But usually it's just
6 being handcuffed from behind, and then you're allowed to
7 bring out just a laundry bag or just clothing for
8 whatever they want to put on when they come out the
9 shower. And that's all.

10 Q. Okay. Now, is that procedure followed at all
11 times when they leave their cell?

12 A. Yes.

13 Q. And do you have -- what is a normal uniform for
14 you? Is that what you have on or a little different?

15 A. No, we have kind of a little different uniform.
16 It's an old maximum uniform, but it becomes just another
17 substitute for this, you know, just for comfortability
18 reasons.

19 Q. So you don't have all of the shield on?

20 A. No, the shield is just a patch and it's
21 basically BTUs, like Army BTUs.

22 Q. So it's more comfortable clothing for you?

25

1 Q. What would Inmate Guinn be taking to the
2 recreation yard?

3 A. Well, at the time I remember he just took the
4 usual: his boxers, shower shoes, his slippers, and he
5 already had his jumper and sweat suit on.

6 Q. And he's cuffed at this point going to the
7 recreation yard?

8 A. Yes.

9 Q. And are you being assisted by anyone?

10 A. Yes, Officer Stevens.

11 Q. Okay. And how long do they normal stay in
12 recreation?

13 A. 45 minutes to an hour.

14 Q. Okay. And you know why you're here today,
15 right?

16 A. Yes.

17 Q. Could you please describe to the jury what you
18 were doing when that incident took place?

19 A. Well, after I placed Mr. Guinn in the yard, I
20 proceeded to the next cell over to get the next inmate
21 out. And that was Inmate Ernest Hill.

22 Q. Okay. Would that be cell No. 10?

23 A. Cell No. 10.

26

1 Q. Okay. And what was your intention with Ernest
2 Hill?

3 A. Well, he didn't want -- he didn't want to go
4 out for recreation. He wanted to take a shower. So I
5 was taking him to the showers.

6 Q. And where are the showers located on that
7 diagram if you would just kind of describe?

8 A. Right before cell 1.

9 Q. So all the way down at the other end of the
10 hall?

11 A. Yes.

12 Q. And this hallway, could you describe the
13 approximate width of this hallway, what it's comprised
14 of?

15 A. Well, the yard takes up most of the room. So
16 it's pretty -- it's not too narrow, but it's about --
17 it's -- as far from the beginning of this building right
18 here to where the back row is, there's about that much
19 walking distance from it between.

20 Q. Between the recreation yard and the cell?

21 A. Yes.

22 Q. That's how much space?

23 A. Yeah, that's how much space it is.

27

1 Q. Okay. Now, you said that Inmate Ernest Hill
2 wanted to get a shower?

3 A. Yes.

4 Q. And where was Tyrone Guinn at that time?

5 A. He was in Yard 2.

6 Q. Okay. Yard 2. And what did you do with Ernest
7 Hill?

8 A. Well, after he was cuffed and he grabbed his
9 belongings, we go up and went ahead and we just walked
10 down to the showers. And I was walking next to him.
11 And he had exchanged some words with Inmate Guinn and,
12 you know, a typical, you know, just thought they were
13 having conversation or whatever. And as we were
14 walking, I just -- I turned forward, and just that fast I
15 heard just like a splash and I was drenched. And I
16 looked around, and I was covered in feces.

17 Q. Okay.

18 A. And it smelled -- it smelt of urine, and it was
19 covered all over the side of my face and my hair and on
20 my clothes.

21 Q. How certain were you that it was feces and
22 urine?

23 A. I could tell by the smell and the color was

28

1 there, and it was just disgusting.

2 Q. And where were you struck?

3 A. Across the side of my face and my hair, my
4 back, all across the back of my shirt, my pants.

5 Q. Okay. What side?

6 A. All, it was across my whole right side.

7 Q. Your whole right side?

8 A. Yes.

9 Q. And what was directly to your right side as
10 you're walking Ernest Hill out to the shower?

11 A. Yard 2.

12 Q. Yard 2. Okay. And was there anyone else in
13 Yard 2 other than Tyrone Guinn at that time?

14 A. No, there was only one person allowed in the
15 yard.

16 Q. Okay. Now, were the other inmates in the cells
17 along that corridor, that hallway?

18 A. Yes.

19 Q. Okay. Did anything strike you from the left
20 side?

21 A. No.

22 Q. Okay. And could you describe to the jury what
23 the yard is comprised of? Is it fenced? Is it --

29

1 A. It's completely fenced, and towards the back of
2 the yard is a concrete wall with probably a little
3 window. And that's about it. Mostly it's just plain
4 fence.

5 Q. Okay. How about the cells directly across from
6 the yard, are all of the cells on that tier?

7 A. Yes.

8 Q. What are they made of and do you have any
9 openings?

10 A. No, there's no openings. Just still iron
11 doors, and there's probably like a little vent -- little
12 holes at the bottom. But, you know, nothing to reach
13 out or grab really like that.

14 Q. Okay. So when you open up a cell, that's
15 basically how you cuff an inmate. You have to actually
16 open up the door --

17 A. No. Actually, it goes through the pod officer.
18 We have a pod, and it's operated by a panel that you
19 press buttons to open the doors.

20 Q. Okay. You mentioned a pod. Can you explain to
21 the jury what the pod is?

22 A. Well, that's the control center of the whole --
23 the entire building. You know, every door is controlled

30

1 by an officer. You know, nothing can be -- it can be
2 opened with a key, but everything is done by a button,
3 by pushing a button.

4 Q. Okay. Now, when you were walking Ernest Hill
5 down to the shower, he was cuffed, correct?

6 A. Yes.

7 Q. And how about Tyrone Guinn? When he was in the
8 yard, was he cuffed?

9 A. No, they aren't in the yard cuffed.

10 Q. So his hands are free and he's free to move
11 about the yard?

12 A. Yes.

13 Q. What is the size of the yard, approximately, if
14 you know? If you don't know, I don't want you guessing.

15 A. I don't know. It's fairly large.

16 Q. Now, what would you say the approximate
17 distance -- you described this narrow hallway. I mean,
18 the yard is directly along that hallway?

19 A. Yes, it's right along. It's right there. You
20 can just easily walk to the fence.

21 Q. Now, you said the feces, do you know what
22 direction it came from?

23 A. Yes.

31

1 Q. And where did it come from?

2 A. It came from our right side.

3 Q. But where did it really come from?

4 A. It came from Yard 2.

5 Q. Okay. And did you actually physically see
6 Tyrone Guinn throw --

7 A. No.

8 Q. -- the feces?

9 A. No, I didn't.

10 Q. What did you -- what was your first thought
11 when this happened to you?

12 A. I was -- I was stunned because I couldn't
13 believe it was actually human feces on my body. So I
14 really didn't know what was going on, but after I gained
15 some kind of sense, I knew I had to secure. The first
16 thing to do all the time is to secure. So the first
17 thing I did was to secure Ernest Hill in the shower
18 because that was the closest place to me.

19 Q. And did Officer Stevens help you do that?

20 A. Yes.

21 Q. Okay. And once you secured him in the shower
22 area, what do you do next?

23 A. After that, Officer Stevens went to go get

32

1 Inmate Guinn and I assisted him with that. And we -- he
2 cuffed up from there in the yard, and we brought him to
3 the cell.

4 Q. Okay. You cuffed Tyrone Guinn?

5 A. Yes.

6 Q. How were you able to accomplish that with him
7 in the yard?

8 A. Well, there's a little panel to drop down to
9 allow them to put their wrists through. It's a little
10 flap.

11 Q. And you were present when that happened?

12 A. Yes.

13 Q. And you still meanwhile have all of this
14 stuff --

15 A. Yes.

16 Q. Feces running down your side?

17 A. Yes.

18 Q. Okay. Could you describe the hallway? Was it
19 covered in any way with the feces?

20 A. Yes, the floors were covered in feces. It was
21 very liquidy. The walls by probably around like cell 3
22 or 4, the walls were covered. Some cell doors were and
23 the fences.

37

1 Q. As a part of the investigation that took place,
2 did you speak to Officer, or Investigator Drake about
3 that, what happened to you?

4 A. **Yes, I believe discussing matters and that was**
5 **about it. And, you know, he just helped me out with,**
6 **you know, just a whole understanding of things. That's**
7 **about it.**

8 Q. Okay.

9 MS. VAN DYKE: May I have a moment, Your Honor?

10 THE COURT: Yes.

11 MS. VAN DYKE: Thank you.

12 Nothing further of this witness, Your Honor.

13 CROSS-EXAMINATION

14 BY MS. WALKER:

15 Q. Good afternoon, Officer.

16 A. **How are you doing?**

17 Q. So you work for the Department of Corrections,
18 right?

19 A. **Yes, ma'am.**

20 Q. And you have been there a year and five months?

21 A. **Yes.**

22 Q. Now, that would make it, if my math is correct,
23 was it June 30th when this incident allegedly occurred?

38

1 A. **Yes.**

2 Q. You would have been there about six months?

3 A. **Right.**

4 Q. So you were relatively new to the job, correct?

5 A. **Yes.**

6 Q. Still learning the ropes, what you're supposed
7 to do, all of that jazz?

8 A. **Somewhat.**

9 Q. Okay. And you were in a pretty -- a part of
10 the prison that has a lot of pretty tough guys, right?

11 A. **Right.**

12 Q. Okay. You indicated that you were escorting
13 Mr. Hill. Is that right?

14 A. **Yes.**

15 Q. And you were on the outside of the fence of
16 Yard 2?

17 A. **Uh-hmm.**

18 Q. You didn't look over towards Yard 2, but
19 something splattered you on the back, right?

20 A. **Right.**

21 Q. Now, you indicated that you got the feces on
22 your face?

23 A. **Right.**

39

1 Q. But you didn't get it in your mouth?

2 A. **Right.**

3 Q. You didn't get it in your eyes, and you were
4 facing forward, correct?

5 A. **Right.**

6 Q. Away from the feces?

7 A. **Right.**

8 Q. So more accurately, you got hit in the head?

9 A. **No, I was hit from across, from the direction I**
10 **was walking. I was walking as if my head was tilted**
11 **this way, and when it came across, it was in a motion**
12 **like this.**

13 Q. Okay. But you said you were looking forward is
14 what I thought you said earlier?

15 A. **Right, I was looking forward.**

16 Q. Now, you know, I know you said from the witness
17 stand and the jury box was how far the walk is. Is that
18 right?

19 A. **No, no, no. I meant as far as the width of**
20 **the -- the width of the walkway.**

21 Q. Okay.

22 A. **That's what I meant.**

23 Q. Okay. How far away were you from the fence of

40

1 the yard? Do you know?

2 A. **About two feet.**

3 Q. Two feet. Okay. Do you know -- do you have
4 any idea where -- how Mr. Guinn had feces in the rec
5 yard?

6 A. **Well, after we had -- after I had placed**
7 **Mr. Hill inside the shower, I did see that there was a**
8 **cup laying on the floor.**

9 Q. Okay.

10 A. **And it's usually the cup that's given to them**
11 **some time around lunchtime. Sometimes they get peanut**
12 **butter, and there was a peanut butter cup that was**
13 **laying on the ground.**

14 Q. Now, these guys, like I said, you're in a tough
15 part of the prison. It's important, obviously, for you
16 to keep a close eye on all of these individuals for
17 contraband, right?

18 A. **Right.**

19 Q. A little earlier you testified that Mr. Guinn
20 went out into the yard with his clothes?

21 A. **Right.**

22 Q. You didn't say anything about a cup at that

23 time, did you?

<p style="text-align: right;">41</p> <p>1 A. Right.</p> <p>2 Q. And I would assume you checked the yard to make</p> <p>3 sure before an inmate goes out there that there's no</p> <p>4 contraband lying around. Would that be correct?</p> <p>5 A. Yes.</p> <p>6 Q. And did you bring the cup with you today?</p> <p>7 A. No.</p> <p>8 Q. It wasn't taken into evidence?</p> <p>9 A. I'm not sure.</p> <p>10 Q. You're not aware of that?</p> <p>11 A. All I do is take him. I had nothing to do with</p> <p>12 it.</p> <p>13 Q. Okay.</p> <p>14 Now, in your -- you recall making -- writing an</p> <p>15 incident report?</p> <p>16 A. Yes.</p> <p>17 Q. I think you referred to that. Do you have a</p> <p>18 copy of that with you?</p> <p>19 A. Yes.</p> <p>20 Q. You do?</p> <p>21 A. Yes.</p> <p>22 Q. Can you take that out and take a look at it for</p> <p>23 me?</p>	<p style="text-align: right;">43</p> <p>1 MS. VAN DYKE: The State in this case was</p> <p>2 not -- obviously, the defendant was interviewed in this</p> <p>3 case. The State did not intend on offering his</p> <p>4 statement. The incident report that Ms. Walker's</p> <p>5 referring to basically includes, you know, some</p> <p>6 conclusions based on the defendant's statement because</p> <p>7 if -- the testimony Officer Shannon had said is that he</p> <p>8 didn't see him throw it. How did he know it was in his</p> <p>9 jumpsuit? The only reason we know that is because of</p> <p>10 the defendant's statement. I'm concerned about hearsay</p> <p>11 statements basically, essentially, in that report.</p> <p>12 MS. WALKER: First of all, Your Honor, looking</p> <p>13 at the report, it does not say Mr. Guinn told me that he</p> <p>14 intended to hit somebody else. He wrote a report based</p> <p>15 on evidence that he had. It's a conclusion that he</p> <p>16 wrote. He made it. That's not hearsay at all. If it</p> <p>17 had said Guinn said such and such, he had drawn a</p> <p>18 conclusion. We don't know how he had drawn the</p> <p>19 conclusion.</p> <p>20 THE COURT: Are you going to ask him how he</p> <p>21 drew his conclusion?</p> <p>22 MS. WALKER: No, she can do that -- it's a</p> <p>23 question of -- for the jury.</p>
<p style="text-align: right;">42</p> <p>1 A. Sure.</p> <p>2 Q. I'm going to give you a couple of seconds to</p> <p>3 just read it over to yourself and then ...</p> <p>4 Okay. If you look at the second sentence,</p> <p>5 which says, I'll read it and you can tell me if it's</p> <p>6 accurate: While walking by Yard 2 with Inmate Hill,</p> <p>7 it's blacked out on my copy, but is that correct?</p> <p>8 A. Okay. Yes.</p> <p>9 Q. Inmate Guinn took a container out of his jumper</p> <p>10 and threw liquid at Inmate Hill. Is that right?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. So from that you had concluded that it</p> <p>13 was Inmate Hill that he was trying to hit. Is that</p> <p>14 correct?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. He wasn't trying to hit you; it just</p> <p>17 happened you were in the wrong place at the wrong time?</p> <p>18 A. (Witness indicating.)</p> <p>19 Q. Okay.</p> <p>20 MS. VAN DYKE: Your Honor, may we approach?</p> <p>21 THE COURT: Yes.</p> <p>22 (Whereupon, the following sidebar conference</p>	<p style="text-align: right;">44</p> <p>1 MS. VAN DYKE: Your Honor, it also calls for</p> <p>2 speculation, too, because how is he to know how the</p> <p>3 inmate --</p> <p>4 MS. WALKER: He put it in his report. That's</p> <p>5 the basis of this investigation. I think that's a fair</p> <p>6 question to ask him, what he put in his report. What he</p> <p>7 based it on is what he based it on. That's a question</p> <p>8 to put in front of the jury. Additionally, even if</p> <p>9 she's complaining that it is hearsay, it's an exception</p> <p>10 to the hearsay rule under 803(3) because it goes to</p> <p>11 Mr. Guinn's state of mind as to intent and, therefore,</p> <p>12 it's an exception.</p> <p>13 MS. VAN DYKE: It's an admission of the party</p> <p>14 opponent that the defendant cannot use unless he takes</p> <p>15 the stand.</p> <p>16 THE COURT: Well, just a moment. Let's go back</p> <p>17 to the 803(3).</p> <p>18 MS. WALKER: 3.</p> <p>19 THE COURT: It is a conclusion as to his state</p> <p>20 of mind, but it's not a statement as to his state of</p> <p>21 mind.</p> <p>22 MS. WALKER: Well, she can't have it both ways,</p>

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1 properly examine him on it because he put it in the
2 report. If she's saying, no, she can't question him on
3 the basis of the conclusion because it's hearsay, then
4 she can't have that either because of 803(3).

5 THE COURT: Well, the conclusion that he's
6 reached I think is admissible.

7 MS. WALKER: Okay.

8 THE COURT: The question is --

9 MS. WALKER: I'm not going to ask him if he
10 said anything.

11 THE COURT: But what are you going to ask him
12 then with regard to the basis of his conclusion?

13 MS. VAN DYKE: I don't think it developed
14 enough for me to at this point say what I would ask him.
15 My concern is that it's bringing in evidence that the
16 only way the witness knew it was because of defendant's
17 statement. And that's my concern.

18 THE COURT: All right. Well, he hasn't
19 testified to that yet, and he has not yet indicated that
20 he's going to. If he does, we'll handle the hearsay
21 issue at that point.

22 MS. WALKER: Absolutely.

23 THE COURT: But I don't think it's admissible

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1 as to defendant's state of mind unless it is...

2 MS. WALKER: The point I'm trying to get is his
3 intent, what was his intent.

4 MS. VAN DYKE: The defendant has --

5 MS. WALKER: And 803(3) is immaterial whether
6 the witness is available. It goes to state of mind.

7 THE COURT: Just a moment.

8 Well, it depends on when the statement was
9 made. I mean, if he made the statement too far after
10 the fact --

11 MS. WALKER: He made it that day when he was
12 interviewed.

13 THE COURT: Well, that may not be close enough
14 in time to get to the 803(3). Just because it goes to
15 intent doesn't make it automatically admissible under
16 803(3). So if you're even thinking about that, we have
17 to go outside the presence of jury and talk about that.

18 MS. VAN DYKE: I'm sorry, I guess this a
19 premature objection.

20 THE COURT: That's all right.

21 MS. WALKER: I just want to make sure I can ask

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1 THE COURT: Right.

2 MS. WALKER: Thanks.

3 (Sidebar conference was concluded.)

4 BY MS. WALKER:

5 Q. All right, Officer. The last thing you had
6 indicated was that you had put in your report that
7 Mr. Guinn took the container out of his jumper and threw
8 it at Inmate Hill and missed him and hit you. Is that
9 right?

10 A. Right.

11 Q. Okay. And everything you would put in your
12 report would be accurate and truthful. Is that correct?

13 A. Yes.

14 Q. And you wouldn't mislead anybody with the
15 incident report, would you?

16 A. No.

17 Q. Okay. Additionally, when you were talking --
18 when you go onto explain the situation when they were
19 cuffing him, you indicate that there was a tussle. Is
20 that right?

21 A. Yes.

22 Q. And, now, Officer Stevens received a cut to his
23 ring finger and pointer finger?

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1 A. Right.

2 Q. Now, I believe your testimony was that that was
3 a result of the handcuffs. Is that right?

4 A. Yes.

5 Q. And it was a result of trying to put the
6 handcuffs back on Mr. Guinn?

7 A. Right.

8 Q. And the reason that there was this tussle that
9 ensued was that Mr. Guinn was pulling away?

10 A. Right.

11 Q. So Mr. Guinn didn't -- wasn't attacking the
12 officer. Is that right?

13 A. No, he wasn't attacking.

14 Q. He was trying to pull away from what -- your
15 best -- your perception of the situation was that
16 Mr. Guinn was trying to get away and that's why he had
17 to be subdued?

18 A. Right.

19 Q. Were the clothes packaged and put into evidence
20 at all? Do you know?

21 A. Yes, ma'am.

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1 Q. You do not. Do you know whether this, I guess,
2 concoction or the fluid, the feces, that's being
3 purported by the prosecutor, was that ever tested? Do
4 you know?

5 A. **No. Well, I'm not sure, so...**

6 Q. So you don't know?

7 A. **I don't know.**

8 Q. Okay. And you didn't have to see a nurse or
9 anybody with respect to --

10 A. **I did see a nurse at the time, but she says as
11 long as it didn't get into like my eyes, my ears, or my
12 mouth, she said then everything should be fine.**

13 Q. You were okay?

14 A. **Yes.**

15 Q. Okay.

16 MS. WALKER: I have nothing further, Your
17 Honor.

18 REDIRECT EXAMINATION

19 BY MS. VAN DYKE:

20 Q. Physically, you're okay, but how did you feel
21 when that happened to you?

22 A. **Humiliated, and it just -- it felt unhuman.**

23 Q. Humiliated and unhuman?

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1 A. **Yes.**

2 Q. Now, Ms. Walker referred to your incident
3 report that you wrote up after the incident took place,
4 and you said that the -- in your report you referred to
5 the container was taken -- Guinn took the container out
6 of his jumper and threw the liquid, basically?

7 A. **Right.**

8 Q. At Inmate Hill?

9 A. **Yes.**

10 Q. Okay. Was that an assumption that you made at
11 that time?

12 A. **Yes, at the time it is -- it was an assumption
13 because we keep the bags, their clothes, and everything.
14 We keep all of the articles outside of the yard. So it
15 is evident he didn't have anything in his hand when he
16 came out. So it had to come from in the jumper.**

17 Q. Okay. Was Ernest Hill struck?

18 A. **No.**

19 Q. Okay. How close were you to Ernest Hill?

20 A. **He was right beside me.**

21 Q. Okay. Directly beside you?

22 A. **Yes.**

23 Q. Would you say that you were almost touching

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1 each other or were you touching each other?

2 A. **No, we weren't touching each other. There was
3 the proper space between us.**

4 Q. Okay. How much space?

5 A. **He was probably about right here.**

6 Q. And you said he, to your knowledge, did not
7 have any feces on him?

8 A. **No.**

9 Q. Anything on him. Okay.

10 Now, this container that we assume was the
11 container that collected the feces by Mr. Guinn, Tyrone
12 Guinn, is that considered contraband?

13 A. **Well, if it's kept in the room, yes, it is
14 considered contraband. It is not used for its purpose
15 and then thrown away, it's contraband.**

16 Q. Now, is this a large cup? Small cup? Can you
17 describe?

18 A. **The cup is about, probably about this size
19 right here.**

20 Q. Okay. And you said he took a number of boxer
21 shorts, articles of clothing?

22 A. **Yes.**

23 Q. And he also had a jumpsuit on?

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1 A. **Yes, he had a jumpsuit and sweatshirt on.**

2 Q. And your assumption was that he concealed that?

3 A. **Yes.**

4 Q. In the uniform?

5 A. **Yes.**

6 MS. VAN DYKE: Thank you.

7 MS. WALKER: Just a couple on re-cross, Your
8 Honor.

9 CROSS-EXAMINATION

10 BY MS. WALKER:

11 Q. I think you testified earlier that the -- that
12 Yard 2 was on your right-hand side, correct?

13 A. **Yes.**

14 Q. And I guess Mr. Hill then was on your left-hand
15 side?

16 A. **Yes.**

17 Q. And you got struck on your right-hand side?

18 A. **Yes.**

19 Q. Okay. And Officer Stevens was behind you?

20 A. **Yes.**

21 Q. So his right-hand side was also facing the
22 yard?

23 A. **Yes.**

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1 is drafted.

2 MS. VAN DYKE: In some way it's work product
3 because they follow their own administrative charges,
4 and I'm not comfortable with it being in front of a
5 jury.

6 THE COURT: I'm going to retain this and hold
7 my ruling until I've had a chance to look at this.

8 MS. VAN DYKE: Thank you, Your Honor.

9 (Sidebar conference was concluded.)

10 BY MS. WALKER:

11 Q. You indicated that you had had a previous
12 contact with Mr. Guinn?

13 A. Yes.

14 Q. And there was no problems between the two of
15 you?

16 A. No.

17 Q. Okay. So when you drew the conclusion that you
18 drew, it was based on what you knew about the two
19 inmates and yourself and your relationships, correct?

20 A. I said as far as what?

21 Q. Well, he didn't have any problems with you that
22 you know of, correct?

23 A. Right.

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1 Q. And you drew the conclusion he was throwing it
2 at the other inmate because why?

3 MS. VAN DYKE: Object, Your Honor.

4 MS. WALKER: Actually, I'll withdraw the
5 question.

6 BY MS. WALKER:

7 Q. You drew that conclusion. Is that correct?

8 A. I mean, I have no previous history of, you
9 know, if they did have any problems.

10 Q. Okay.

11 MS. WALKER: Thank you. Nothing further.

12 MS. VAN DYKE: Just prompted a question.

13 REDIRECT EXAMINATION

14 BY MS. VAN DYKE:

15 Q. Were you aware of whether or not the defendant
16 and Ernest Hill had any problems?

17 A. No.

18 MS. VAN DYKE: Okay. Thank you. Nothing
19 further of this witness, Your Honor.

20 THE COURT: You may step down.

21 You may call your next witness.

22 MS. VAN DYKE: Thank you. The State would call

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1 THE COURT: Perhaps, we should take a
2 five-minute recess before we put Officer Stevens on the
3 stand.

4 (Whereupon, jury leaves the room at 2:49 p.m.)

5 THE COURT: We'll reconvene in five minutes.

6 (Recess taken.)

7 THE COURT: Please bring in the jury.

8 (Whereupon, jury enters the room at 3:03 p.m.)

9 THE COURT: You may call your next witness.

10 MS. VAN DYKE: Officer Neil Stevens, Your

11 Honor.

12 THE COURT: Do we need the diagram?

13 MS. VAN DYKE: No, we do not.

14 THE COURT: All right. We can move that then.

15 NEIL STEVENS, having duly been sworn, was
16 examined and testified as follows:

17 DIRECT EXAMINATION

18 BY MS. VAN DYKE:

19 Q. Good afternoon, Officer Stevens.

20 A. Hello.

21 Q. With whom are you employed?

22 A. Delaware Correctional Center.

23 Q. And how long have you been an employee at

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1 Delaware Correctional Center?

2 A. Five years.

3 Q. Do you mind me asking how old you are?

4 A. 26.

5 Q. In what capacity do you work with the Delaware
6 Correctional Center?

7 A. What -- I don't understand. Capacity?

8 Q. What is your position with --

9 A. I'm a correctional officer.

10 Q. Have you always maintained that position?

11 A. Yes, ma'am.

12 Q. Since your employment began?

13 A. Yes, ma'am.

14 Q. And what are your current duties and
15 responsibilities, if you can describe it briefly for the
16 jury?

17 A. Just do routine checks, make sure inmates
18 aren't getting out of line, recreation, feeding of
19 inmates.

20 Q. Okay. And have you received any specialized
21 training in that area to do your job, to perform your
22 job?

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1 A. **At that moment, yes, ma'am.**
 2 Q. Okay. Are inmates permitted to carry personal
 3 items into the yard?
 4 A. **No, ma'am.**
 5 Q. Okay. How about like their boxers, shoes,
 6 shower shoes?
 7 A. **Shower stuff, they normally put that on the**
 8 **outside of the yard. They leave it on the outside of**
 9 **the yard or they place it on the shower that they're**
 10 **going to receive the shower at.**
 11 Q. Okay. So they're not permitted to have
 12 anything inside the yard?
 13 A. **No, ma'am.**
 14 Q. Okay. So you don't recall seeing Inmate Guinn
 15 carrying anything?
 16 MS. WALKER: Objection, Your Honor. Asked and
 17 answered.
 18 THE COURT: I'll allow one more question. Go
 19 ahead.
 20 MS. VAN DYKE: I'm sorry, Your Honor?
 21 THE COURT: Go ahead. You may ask that
 22 question.
 23 BY MS. VAN DYKE:

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1 Q. Do you recall him carrying anything, container,
 2 anything?
 3 A. **At any point?**
 4 Q. Uh-hmm.
 5 A. **Yes, there was a container, almost looked like**
 6 **a peanut butter jug or something in that manner.**
 7 Q. Why do you refer to it as a peanut butter jug?
 8 A. **Because that's what it looked like. It looked**
 9 **like a peanut butter container or maybe a juice**
 10 **container.**
 11 Q. What was the size? You did that, so...
 12 A. **Just probably about maybe this tall, that**
 13 **round.**
 14 Q. When did you observe that container?
 15 A. **After he -- after Officer Shannon got hit by**
 16 **the feces and urine.**
 17 Q. Okay. All right. We're going to get to that
 18 right now. At what point -- what were you doing prior
 19 to that incident occurring? What were you and Officer
 20 Shannon doing?
 21 A. **Removing another inmate from his cell.**
 22 Q. And who was that inmate?

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1 Q. Okay. And where were you taking that inmate?
 2 A. **To the shower.**
 3 Q. Okay. And in the process of taking him to the
 4 shower, where is Tyrone Guinn at this time?
 5 A. **In Yard 2.**
 6 Q. Okay. And why don't you lead the jury through
 7 your -- what happened, the process?
 8 A. **Well, Mr. Hill was removed from lower 10. I**
 9 **was behind Officer Shannon and Inmate Hill. Then I**
 10 **heard something, looked up, and Officer Shannon had**
 11 **feces and urine just running all down his face, all over**
 12 **his face, the back of his head, all over the right side**
 13 **of his body.**
 14 Q. Okay. How did you know it was feces and urine?
 15 A. **You could smell it.**
 16 Q. Could you -- you could also see it, right?
 17 A. **Yeah, I could see it.**
 18 Q. Okay. Did it go anywhere else?
 19 A. **I had a little bit on my right pant.**
 20 Q. What do you mean by "a little bit"?
 21 A. **A splatter.**
 22 Q. Okay. And where on your pant leg was it?
 23 A. **About the knee level on the right-hand side.**

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1 Q. Okay. Was it on the back? The side?
 2 A. **It was on the side.**
 3 Q. Okay. And predominantly where would you say
 4 Malcolm Shannon, Officer Shannon, was hit on the --
 5 A. **All on his right-hand side and on the backside**
 6 **of his right-hand side.**
 7 Q. Okay. And what direction?
 8 A. **It came from our right.**
 9 Q. Okay. And what is -- what is the only --
 10 A. **Yard 2.**
 11 Q. Is that the only thing to your right?
 12 A. **Yes, ma'am.**
 13 Q. And who was in Yard 2?
 14 A. **Inmate Guinn.**
 15 Q. Was anyone else in that yard?
 16 A. **No, ma'am. He was the only person out besides**
 17 **Mr. Hill, and he was handcuffed behind his back.**
 18 Q. Okay. Was Tyrone Guinn, was he cuffed at any
 19 point when he was in the yard?
 20 A. **In the yard until we take him off at the flap.**
 21 **That's maybe a period of five seconds.**
 22 Q. Okay. So when he's in the yard, he's uncuffed?

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1 Q. Did you actually see Tyrone Guinn throw
2 anything?

3 A. No, ma'am.

4 Q. Okay. Do you recall whether or not Ernest
5 Hill, the other inmate that you were escorting, whether
6 or not he had any feces/urine on him?

7 A. I do not recall. I don't believe so.

8 Q. How far away would you say Officer Shannon was
9 from the recreation yard?

10 A. Well, on the walkway, I mean, there's only
11 maybe a space of four-feet wide to walk in between the
12 wall and the yard fence. So not far.

13 Q. Okay. Do you recall seeing Inmate Guinn in the
14 yard?

15 A. Yes, ma'am.

16 Q. Okay. Do you remember seeing him at any
17 particular location at any time in the yard?

18 A. All over it pretty much.

19 Q. How about when you were escorting Ernest Hill,
20 did you take any particular -- pay any particular
21 attention to Tyrone Guinn at that point?

22 A. Not until after the incident. I looked up, and
23 he was maybe three or four feet back from the fence.

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1 Q. Okay. Three or four feet back from the fence?

2 A. Yes, ma'am.

3 Q. Did he have anything in his hand?

4 A. The container.

5 Q. Could you tell the jury what your observations
6 were of Officer Shannon, like the way he responded to
7 what happened?

8 A. Mr. Shannon was -- he was in complete shock. I
9 mean, he was just in complete shock, probably denial
10 that he had feces and urine on his face and running --
11 dripping down his ears and hair.

12 Q. And what about you, what were you thinking at
13 that time?

14 A. I felt bad for him.

15 Q. What was the thought that you had at that point
16 once you realized the incident occurred? What did you
17 do next?

18 A. I told Mr. Shannon to take Mr. Hill to the
19 shower, secured him in there, and then I told Mr. Guinn
20 to cuff up. And he did.

21 Q. What does "cuff up" mean?

22 A. Back up to the flap on the yard, place his

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1 take him out of the yard.

2 Q. Okay. And he was compliant in doing that?

3 A. Yes, he was compliant.

4 Q. And meanwhile, where is Officer Shannon?

5 A. Shannon, Officer Shannon, had come back to me.

6 Q. Okay. So he had to actually go on his own with
7 Inmate Hill?

8 A. It was only a couple more steps from where they
9 were at.

10 Q. Okay. And was there any necessity as to why
11 you needed to cuff Tyrone Guinn at that time?

12 A. It's just better to take care of a situation
13 right away if you can.

14 Q. Why is that?

15 A. This way he doesn't have time to do something
16 else.

17 Q. You said that he was compliant in cuffing him.
18 What was your next step at that point?

19 A. To take him out of the yard and place him back
20 in his cell.

21 Q. And where is his cell in relation to the yard?

22 A. Straight across, pretty much.

23 Q. And was Officer Shannon back with you?

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1 A. Yes, ma'am.

2 Q. Okay. And how -- could you explain to the jury
3 the process that you went through to get Tyrone Guinn
4 back into his cell?

5 A. I cuffed him at the flap in the yard. Removed
6 him from the yard. Brought him back to his cell. When
7 we bring him back to his cell, went to take one cuff
8 off, and he pulled away. As soon as he pulled away,
9 just restrained him. Took him down. Put the cuff back
10 on his right wrist, and then removed him from the cell,
11 and brought him out to the interview room.

12 Q. You said "he." When you started to take the
13 cuff off of his one hand, is this occurring while he's
14 inside his cell?

15 A. Yes, ma'am. He's at the cell, and the door's
16 maybe open this much.

17 Q. Okay. You're able to get in through that door?

18 A. I am? Yes, ma'am.

19 Q. With Tyrone Guinn?

20 A. Yes, ma'am.

21 Q. Okay. And you say he pulls away. Well, if
22 you're undoing the cuff, could you describe how he

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1 A. It was -- there was a good chunk of skin ripped
2 out and it was hanging off a little bit.

3 Q. Okay. Once this incident happened, did you
4 stay on shift or did you go somewhere else?

5 A. Captain McCraner actually sent myself and
6 Officer Shannon home to get showers and get changed.

7 Q. And did you return for your shift?

8 A. Yes, ma'am.

9 Q. And you worked till?

10 A. 8 a.m. the next morning.

11 Q. You compiled an incident report in regards to
12 this case, correct?

13 A. Yes, ma'am.

14 Q. Okay. Did you -- I believe you already stated
15 you did not see Tyrone Guinn throw the container of
16 feces?

17 A. Excuse me?

18 Q. You did not see Tyrone Guinn throw the
19 container of feces?

20 A. At Officer Shannon? No, ma'am.

21 Q. Okay. Did he throw it at Officer Shannon, did
22 he throw it at Inmate Hill, or was he throwing it at
23 you? Do you know? I don't want you to assume, but do

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1 you --

2 A. No, I don't know.

3 Q. There's a reference in your report that he
4 threw the container or the feces at Inmate Hill. Is
5 there -- is that an assumption on your part?

6 A. No, it said towards.

7 Q. I'm sorry?

8 A. It said towards Inmate Hill. It did not say at
9 him. It said towards him.

10 Q. Towards him?

11 A. Yes, ma'am.

12 Q. So that would also refer to towards you and
13 Officer Shannon?

14 A. Yes, ma'am. In the direction of.

15 Q. Are you aware of any -- is there any bad blood
16 between you and Inmate Guinn?

17 A. Never, no.

18 Q. Are you aware of any bad blood between Officer
19 Shannon and Inmate Guinn?

20 A. No, ma'am.

21 Q. How about any -- are you familiar with any bad
22 blood between Inmate Ernest Hill and Tyrone Guinn?

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1 Q. Okay. As you work on a tier, are you familiar
2 with who generally has a problem with who as far as
3 inmates?

4 A. If you work the tier long enough, yes, ma'am,
5 you do learn, but I never worked that building pretty
6 much, so...

7 Q. You never worked that building?

8 A. I had, but that's not my area. That's not the
9 designated area for me to work every day. I was just
10 there on overtime that day.

11 Q. Okay. But there was nothing that led you to
12 believe --

13 A. No, ma'am.

14 Q. -- as far as that there was bad blood between
15 Inmate Guinn and Ernest Hill?

16 A. No, ma'am.

17 MS. VAN DYKE: Thank you. Nothing further.

18 CROSS-EXAMINATION

19 BY MS. WALKER:

20 Q. Good afternoon, Officer.

21 A. How are you doing?

22 Q. Good. Thanks. How are you doing?

23 A. Fine. Thank you.

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1 Q. All right. I just want to go over again how
2 you guys were lined up. My understanding, and let me
3 know if I'm wrong, is you were walking past Yard 2,
4 correct?

5 A. Yes, ma'am.

6 Q. You, Officer Shannon, and Mr. Hill. Is that
7 correct?

8 A. Yes, ma'am.

9 Q. And Officer Shannon was to the right of
10 Mr. Hill?

11 A. Yes, ma'am.

12 Q. And you were behind Officer Shannon?

13 A. I was. Yes, ma'am.

14 Q. And on the right-hand side would be Yard 2
15 where Mr. Guinn was?

16 A. Yes, ma'am.

17 Q. Okay. Now, you indicated that you weren't
18 aware of any bad blood between Mr. Guinn and Mr. Hill,
19 right?

20 A. Yes, ma'am.

21 Q. And as the prosecutor indicated, you filed an
22 incident report in this case, correct?

81

1 Q. Do you have a copy of that?

2 A. **In my back pocket.**

3 Q. Can you pull it out? Just take a look at it

4 for me and refresh your recollection, and I'll ask you a

5 couple of questions.

6 A. **Okay.**

7 Q. Okay. You indicated, as she asked you, whether

8 or not, and I think you corrected her properly, that you

9 threw -- excuse me -- that Mr. Guinn threw the fluid

10 towards Inmate Hill. Is that correct?

11 A. **Yes, ma'am.**

12 Q. And everything in this report is truthful and

13 accurate, correct?

14 A. **Yes, ma'am.**

15 Q. You wouldn't lie?

16 A. **No, ma'am.**

17 Q. In an indent report?

18 A. **No, ma'am.**

19 Q. Okay. Now -- but you testified earlier that

20 you had received -- had gotten feces on yourself,

21 correct?

22 A. **Yes, ma'am.**

23 Q. And Officer Shannon did as well?

82

1 A. **Yes, ma'am.**

2 Q. So -- but you didn't choose to write that he

3 threw the fluid towards you and Officer Shannon?

4 A. **No, ma'am.**

5 Q. Okay. And you say that the feces and urine did

6 not hit Inmate Guinn. Is that a typo? Should that read

7 Hill?

8 A. **Yes, that was a typo. That should be Ernest**

9 **Hill.**

10 Q. So the urine and feces did not hit Inmate Hill,

11 but did hit Shannon in his head, face, shirt, and pants

12 and that you received a splash of feces?

13 A. **Yes, ma'am.**

14 Q. So you premised that particular sentence about

15 you and Officer Shannon receiving feces by the fact that

16 Hill didn't get hit?

17 A. **Excuse me?**

18 Q. The beginning of that sentence before you --

19 A. **Started off with Inmate Hill?**

20 Q. Right.

21 A. **Yes, ma'am.**

22 Q. You talk about him first before you get to you

83

1 A. **Yes, ma'am.**

2 Q. Okay. Now, I suppose, as you indicated,

3 Officer Shannon, he was shocked, correct?

4 A. **Yes, ma'am.**

5 Q. And are you aware that he was only on the job

6 six months at that time?

7 A. **I knew he was fairly new. Yes, ma'am.**

8 Q. Fairly new. And were you kind of like his big

9 buddy or more experienced person to be with him? Is

10 that the way it works there?

11 A. **Sometimes, yes.**

12 Q. Okay. Now, were you upset that feces landed on

13 you?

14 A. **Not at the time because I had no idea it was on**

15 **me until I looked afterwards.**

16 Q. And when was that that you ascertained that?

17 A. **After we had placed Inmate Guinn in the**

18 **interview room.**

19 Q. Okay. But you knew right away that Shannon had

20 it on him, obviously?

21 A. **Yes, ma'am. Yes, ma'am.**

22 Q. Okay. Now, you indicated that you then went --

23 at some point after Mr. Hill was placed in the shower

84 --

1 that you went to the yard and cuffed Mr. Guinn. Is that

2 correct?

3 A. **Yes, ma'am.**

4 Q. And you did that by having him place his hands

5 through the flap?

6 A. **Yes, ma'am.**

7 Q. And then you brought him out?

8 A. **Yes, ma'am.**

9 Q. Okay. And then you took him to his cell?

10 A. **Yes, ma'am.**

11 Q. Now, is there a flap on the cell door?

12 A. **Not on the door. No, ma'am.**

13 Q. Where is the --

14 A. **The flap is -- if this is face level at the**

15 **door, the flap is on the wall over here. That's to**

16 **place -- primarily to place laundry and the food trays**

17 **in the cell.**

18 Q. Do you use it to cuff people up?

19 A. **No, ma'am. Never.**

20 Q. You actually cuff people -- excuse me. When

21 you take people to the yard?

22 A. **Yes, ma'am.**

85

1 A. **Yes, ma'am.**
 2 Q. And then you uncuff them through the flap?
 3 A. **In the yard. Yes, ma'am.**
 4 Q. So any time that you're dealing with an
 5 individual in their cell, you'll go in there and they're
 6 not cuffed?
 7 A. **No, there's actually a system where the door's**
 8 **opened. The door slides. It can slide all the way**
 9 **open. And then if you place -- there's a bar that**
 10 **places on the food flap.**
 11 Q. Okay.
 12 A. **And I wouldn't say it locks in there, but**
 13 **there's a slit for it to sit on. Therefore, the door**
 14 **can only open up so much.**
 15 Q. Okay.
 16 A. **Then that's maybe about this much.**
 17 Q. And that's how you get them in and out and then
 18 you uncuff them?
 19 A. **Yes, ma'am. Most of the time. Yes, ma'am.**
 20 Q. And Mr. Guinn did not give you any problem at
 21 all when you cuffed him, correct?
 22 A. **Not at the yard. No, ma'am.**
 23 Q. But he gave you a hard time when you uncuffed

86

1 him?
 2 A. **Yes, ma'am.**
 3 Q. When he was in his cell?
 4 A. **Yes, ma'am.**
 5 Q. His habitat, correct?
 6 A. **Yes, ma'am.**
 7 Q. Okay. And you testified that he was pulling
 8 away from you and that's what caused the problem here,
 9 correct?
 10 A. **Yes, ma'am.**
 11 Q. And he was trying to get away from you?
 12 A. **He was turning around, pulling away. Yes,**
 13 **ma'am.**
 14 Q. He didn't try to hit you?
 15 A. **No, ma'am.**
 16 Q. He wasn't trying to put you -- throw you to the
 17 ground or anything?
 18 A. **No, ma'am.**
 19 Q. In fact, you did that to him to restrain him,
 20 correct?
 21 A. **Yes, ma'am.**
 22 Q. You then indicated also that Mr. -- excuse
 23 me -- that you had found some type of container. Was it

87

1 that found in the yard?
 2 A. **I had seen the container. I don't know...**
 3 Q. You don't remember where?
 4 A. **I seen the container in his hand.**
 5 Q. In his hand?
 6 A. **Before he came to cuff -- for him to handcuff**
 7 **him in the yard. He had thrown it down on the yard**
 8 **ground.**
 9 Q. So it was on the ground?
 10 A. **In the yard. Yes, ma'am.**
 11 Q. And you saw it down on the ground in the yard?
 12 A. **Yes, ma'am.**
 13 Q. Did you recover that item?
 14 A. **I did not. No, ma'am.**
 15 Q. Isn't it true that when inmates go into the
 16 yard that it's important that there not be any
 17 contraband in the area?
 18 A. **Yes, ma'am.**
 19 Q. Okay. So someone would have had to collect
 20 that item at some point, correct?
 21 A. **In the yard?**
 22 Q. Yes.
 23 A. **Yes, ma'am.**

88

1 Q. But you don't know who that was?
 2 A. **I have no idea.**
 3 Q. And you don't know whether that was done?
 4 A. **If it was collected?**
 5 Q. Right.
 6 A. **I can't say I do, no.**
 7 Q. Okay. Were your clothes collected?
 8 A. **Yes, ma'am.**
 9 Q. And are they here today?
 10 A. **I don't see them here.**
 11 Q. That you're aware of?
 12 A. **Not that I'm aware of. No, ma'am.**
 13 Q. Do you know whether the substance was ever
 14 tested, to your knowledge, the items --
 15 A. **I can't say I do. No, ma'am.**
 16 Q. Okay. And you indicated earlier that you never
 17 had a problem with Mr. Guinn before that?
 18 A. **No, never.**
 19 Q. Okay. And you weren't on the tier long enough
 20 to know the ins and outs of all of the relationships
 21 between the prisoners?
 22 A. **Not on that tier. No, ma'am.**
 23 Q. You then testified that you then went to see

101

1 this. It's unduly prejudicial. The fact that she's
 2 already called a couple of officers to testify to the
 3 nature of the confinement of that area, it's becoming
 4 prejudicial. To now come in with death row inmates and
 5 other maximum security inmates, that's not even relevant
 6 to the point of what's going on here.

7 THE COURT: Where are you going with this?

8 MS. VAN DYKE: I'm moving onto Building 19,
 9 which is where the defendant was.

10 THE COURT: All right. I think for the
 11 purposes of these proceedings it's not necessary to
 12 describe by category the level of security this
 13 defendant was under because that could possibly be
 14 unduly prejudicial with regard to what he was convicted
 15 of. Of course, if he takes the stand, that point
 16 becomes moot.

17 MS. WALKER: Right.

18 THE COURT: But you certainly can explore the
 19 nature of the security in that building, but not by type
 20 or category.

21 MS. VAN DYKE: I wasn't really sure I was going
 22 in that area, but I will move on.

23 THE COURT: All right.

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1 (Sidebar conference was concluded.)

2 THE COURT: You may proceed when the reporter's
 3 ready.

4 MS. VAN DYKE: Thank you.

5 BY MS. VAN DYKE:

6 Q. Sergeant Phillips, are you familiar with Tyrone
 7 Guinn?

8 A. Yes, I am.

9 Q. And how are you familiar with him?

10 A. He has been housed in the SHU ever since I've
 11 been back at DCC.

12 Q. Okay. And do you know what building he was
 13 located in June 30th, 2004?

14 A. Yep, Building 19.

15 Q. Okay. And could you please explain to the jury
 16 what standard operating procedures apply with respect to
 17 the inmates in Building 19 of the SHU?

18 A. In Building 19 they are max inmates. Always
 19 have two-man backup on the inmates at that time.
 20 Actually, now it's changed to three-man backup. At that
 21 time it was two.

22 They receive one hour res three times a week

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1 they don't come out of their cells unless they have a
 2 visit, court, or some kind of administrative function
 3 they have to do in Building 20. The officers in the
 4 building feed them through a food flap. When the
 5 inmates are transported, they're transported by
 6 handcuffs. If they're staying on the tier and if
 7 they're going off of the tier, out of the building,
 8 they're shackled and handcuffed.

9 Q. Okay. And you said you do know Tyrone Guinn as
 10 an inmate. Do you see him in the courtroom today?

11 A. Yes, that's correct. He's seated in the
 12 greenish-colored shirt to my right.

13 Q. Thank you.

14 Do you recall the incident involving Tyrone
 15 Guinn, Officer Shannon, and Officer Stevens?

16 A. Yes, I do.

17 Q. On June 30th, 2004?

18 A. Yes, ma'am.

19 Q. And what was your involvement in that incident?

20 A. I was called as backup. I was on the A and B
 21 side. This happened on the C and D side, and I was
 22 called on the radio as backup. I responded. Officer
 23 Stevens explained to me that, which I could see, that

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1 Officer Shannon had just had feces thrown all over him.
 2 And when I walked into the tier, I saw Officer Shannon
 3 with feces dripping down from the back of his head, over
 4 his face, onto his clothes. And Officer Stevens had on
 5 his right -- back of his right leg feces on it, on the
 6 clothes.

7 Q. Okay. Was there feces anywhere else?

8 A. Yes, there was feces hanging from the Yard 2,
 9 which was where Inmate Guinn was, all over the floor and
 10 all over the cell doors of 4 and 8.

11 Q. Okay. You said there was feces all over Yard
 12 2. Why on yard --

13 A. Each yard in the building is surrounded by a
 14 cage, kind of like a dog kennel cage. And it goes from
 15 floor to ceiling. And it was hanging from the actual
 16 cage itself, dripping down to the floor, just dripping
 17 down.

18 Q. Okay. How did you know what it was?

19 A. It smelled like feces.

20 Q. Okay. And were you certain of that?

21 A. Absolutely.

22 Q. Okay. Did you take any photographs with

109

1 Q. Well, who was the fortunate person that got to
2 cleanup? Do you recall? Do you know that?

3 A. **Myself and a Sergeant Percheck acquired two**
4 **other inmates to cleanup the feces on the floor, the**
5 **cell doors, and the yard.**

6 Q. Okay. And do you know what procedure they had
7 to follow in order to cleanup something like that?

8 A. **We obtained biohazard suits, red evidence or**
9 **red biohazard bags that were provided by medical. Any**
10 **time you have a biohazard we get those bags to use. We**
11 **used bleach and water to mop everything down. After**
12 **everything was cleaned up, everything that we used was**
13 **put in red biohazard bags and sent to medical for them**
14 **to dispose of.**

15 Q. Okay.

16 A. **Which is their procedure.**

17 Q. The bag that you were just describing, the
18 biohazard red bag, was that the same bag?

19 A. **They were the same type, except on the**
20 **biohazard bags that we put the clothes in, we tagged**
21 **them with an evidence tag so we would know the evidence.**
22 **And that was taken out by Staff Lieutenant Rispoli, at**
23 **the time he was lieutenant, where the cleanup bags had**

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1 **to be taken out of the building until later on that**
2 **night.**

3 Q. Now, there's been some discussion you haven't
4 been in the courtroom for in regards to the incident
5 reports that are created. You've already created an
6 incident report as well, correct?

7 A. **That's correct.**

8 Q. And there's been mention in Officer Shannon's
9 report as well as Officer Stevens' report that Inmate
10 Guinn had thrown the feces toward or at Inmate Hill. Is
11 that an assumption on your part, that the feces was
12 thrown at Inmate Hill?

13 A. **I have no idea who it would have been thrown**
14 **at. When we take the inmates out to rec, the officers**
15 **are with the inmates. So if you threw it in the**
16 **direction of an inmate, you're going to hit an officer.**

17 Q. And you were not present for the incident?

18 A. **No, I came in after the incident. After the**
19 **feces had been thrown, I was called.**

20 Q. And so you have no idea what the defendant's
21 intention was at the time that it happened?

22 A. **No.**

23 **MS. VAN DYKE: May I have a moment, Your Honor?**

111

1 **THE COURT: Certainly.**

2 BY MS. VAN DYKE:

3 Q. We've already talked about the clothing,
4 pictures. Do you recall seeing any type of container or
5 cup?

6 A. **There was, I believe it was a milk carton that**
7 **he had. It's been a while.**

8 Q. Did you actually see a milk container or
9 carton? If you don't recall --

10 A. **I don't recall, but I believe it was a milk**
11 **carton.**

12 Q. So that was not something that you collected?

13 A. **No, we were -- my personal concern at the time**
14 **was Inmate Guinn was in the interview room. He wasn't**
15 **going anywhere. And my concern was getting Officer**
16 **Shannon out of his clothes and making sure that Officer**
17 **Stevens' hand was seen by medical.**

18 **MS. VAN DYKE: Okay. Thank you very much.**

19 **Nothing else.**

20 **MS. WALKER: Thank you, Your Honor.**

21 **CROSS-EXAMINATION**

22 BY MS. WALKER:

23 Q. Good afternoon, Sergeant.

112

1 A. **Good afternoon.**

2 Q. I think you already indicated to the jury that
3 you were not present when the alleged feces throwing
4 occurred. That's correct, right?

5 A. **That's correct. It was thrown by the time I**
6 **got to the scene. That's why I was called.**

7 Q. And you were called because you are a
8 supervisor?

9 A. **That's correct.**

10 Q. Okay. And you responded to assist your
11 officers, right, that's your job?

12 A. **That's correct.**

13 Q. And you were concerned about Officer Shannon
14 because he was in a state of shock?

15 A. **Correct.**

16 Q. And by the way, Officer Shannon was relatively
17 new to the job at the time, correct?

18 A. **I believe he had approximately four or five**
19 **months.**

20 Q. Okay. And was -- let me take that back. You
21 did file an incident report in this case, correct?

22 A. **That's correct.**

23 Q. And you collected some evidence in this case?

113

1 A. **That's correct.**

2 Q. You indicated to the jury that you had
3 collected clothing, for example?

4 A. **That's correct.**

5 Q. You also took some pictures?

6 A. **That's correct.**

7 Q. And you said that you arrived after the
8 incident, like within a minute or so?

9 A. **That's correct, or less.**

10 Q. But after you arrived, you went and helped
11 Shannon and Stevens?

12 A. **Yes.**

13 Q. Okay. And about how long did that take, would
14 you say?

15 A. **Maybe five or 10 minutes just to get Officer**
16 **Shannon, and medical came down to see Officer Stevens.**

17 Q. Were you present when medical saw them?

18 A. **I was not present when medical saw Stevens. I**
19 **went with the captain that came down to move Inmate**
20 **Guinn to the isolation unit.**

21 Q. So you did that as well, right, after taking
22 care of Officer Shannon?

23 A. **That's correct.**

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1 Q. And how long do you think that took you?

2 A. **Maybe five minutes.**

3 Q. Okay. So you'd say about 10 or 15 minutes that
4 all took you?

5 A. **Yes.**

6 Q. And then at some point you took pictures of the
7 scene, correct?

8 A. **That's correct.**

9 Q. Okay.

10 MS. WALKER: And, Your Honor, may I retrieve
11 the photos?

12 THE COURT: Yes, you may move freely about the
13 courtroom.

14 MS. WALKER: Thank you.

15 BY MS. WALKER:

16 Q. All right. Since the jury's already seen this,
17 I'd like to approach and show you, I guess they're
18 Exhibits 1 and 2 again and, specifically, Exhibit 2. I
19 think you talked to the prosecutor about this, but I
20 want to make sure that the jury understands. In the
21 middle of the photo there's a very light --

22 A. **The white -- the white color in the picture is**

115

1 Q. Okay. So that's not intended to be a
2 substance?

3 A. **No.**

4 Q. There's not a container of some kind?

5 A. **Right.**

6 Q. That's not contraband, to the best of your
7 knowledge?

8 A. **I believe it was the --**

9 Q. Light?

10 A. **The light from the floor or the light from the**
11 **ceiling hitting on the floor.**

12 Q. How often would you say these floors are
13 cleaned?

14 A. **They're cleaned every night. We have inmate**
15 **workers that come out every night and clean those**
16 **floors.**

17 Q. Okay. And then the second picture, I can't
18 really see it. What is supposed to be the feces?

19 A. **The feces is on the wall to the -- what would**
20 **be the left of the door on the wall here and on the**
21 **floor by the door. There's actually a lot of it by the**
22 **door, the door track, under the door track, and the**
23 **walls are splattered.**

116

1 Q. Now, would the wall have been -- let's say I'm
2 between -- would you be between the wall and the fence
3 if you were walking down the --

4 A. **Yes, the officer would have been on the right**
5 **side of Inmate Guinn. Inmate Guinn would have been**
6 **closest to the wall. And our officer, Shannon, was next**
7 **to the cage. I'm sorry. Inmate Hill would have been**
8 **closest to the wall. Inmate Guinn would have been in**
9 **the yard.**

10 Q. All right. So Officer Shannon and Officer
11 Stevens were closest to the yard, to the best of your
12 knowledge?

13 A. **That's correct.**

14 Q. From what you understood. And Mr. Hill was to
15 the left?

16 A. **To the left, on the side of the wall.**

17 Q. Of the officer. And it's on the left-hand side
18 that the feces hit the wall?

19 A. **Yes.**

20 Q. So it would have been more to Mr. Hill's left?

21 A. **It would have been -- it would have had to go**
22 **past our officer to get to Inmate Hill.**

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1 wall, correct?

2 A. Yes.

3 Q. You also indicated that the -- that Officer

4 Stevens was bandaged up at the nurse's station or by the
5 nurse?

6 A. Correct.

7 Q. He received a band-aid, correct?

8 A. I don't recall what they put on him.

9 Q. Okay. Do you have a copy of your incident
10 report with you?

11 A. Yes, I do.

12 Q. Okay. Could you take that out and take a look
13 at it? You indicated in your report -- well, first of
14 all, in your report do you mention that you can see, and
15 you can take your time to look at this, a container
16 being involved at all?

17 A. No, the only evidence that I listed was clothes
18 and pictures.

19 Q. Okay. Thank you.

20 And near the top of the report you do point out
21 that when you were -- well, first of all, this report
22 was done as part of an investigation or, excuse me, as
23 part of a procedure that the Department of Corrections

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1 uses any time there's an incident?

2 A. That's correct. Any time we have an incident
3 or an inmate's going to receive disciplinary action, we
4 do. Everybody that's involved in the incident does an
5 incident report.

6 Q. Okay. So not just criminal instances are
7 documented?

8 A. No, an incident report can be for anything.

9 Q. And this incident report helped you in
10 internally disciplining Mr. Guinn?

11 A. There's an incident report done and then
12 there's an disciplinary report done. The disciplinary
13 report is forwarded to the hearing officer. The hearing
14 officer does the discipline from that report and the
15 incident reports that are written.

16 Q. So to the best of your knowledge, Mr. Guinn was
17 disciplined?

18 A. As far as I know. He went to isolation and
19 then from there --

20 Q. Do you know how long he was there?

21 A. More than likely 15 days at least.

22 Q. Now, you also indicated near the top of the

23 report, like the sentence second I believe it is, that

119

1 you learned from Officer Stevens in your investigation

2 that Mr. Guinn had thrown the feces at Mr. Hill. Is

3 that correct? And there is more after that.

4 A. That is what Officer Stevens told me.

5 Q. Okay. But he also goes onto tell you that he
6 missed Inmate Guinn and that it had hit both of the
7 officers, correct?

8 A. That's what Officer Stevens told me, that he
9 did not hit Hill. He hit both him and Shannon.

10 Q. But he didn't come into you and say, This
11 inmate came and threw feces at me; he was honest in
12 telling you what he thought happened?

13 A. Yes.

14 Q. You don't think he was dishonest, do you?

15 A. No.

16 Q. Now, you indicated that you took some pictures
17 and that you bagged up the clothes. And the clothes,
18 you wouldn't know what happened to them after Rispoli
19 got to them, right?

20 A. Once I give them to Staff Lieutenant Rispoli,
21 they're out of my hands. I have nothing else further to
22 do with the property as far as evidence goes. What
23 should have happened was it went to the hearing officer

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1 until the hearing took place just in case he needed the
2 evidence as -- for the hearing that he would have had
3 with Inmate Guinn.

4 Q. Okay. Now, the -- you took some pictures. You
5 took pictures of the feces on the ground and on the
6 wall, right? And you took a photo, which the jury has
7 seen, of the little cut that he has on his hand,
8 correct?

9 A. That's correct.

10 Q. Did you take any pictures of the officers with
11 the feces on them and their clothes?

12 A. No, all we wanted to do is get Officer Shannon
13 out of his clothes.

14 Q. You wanted to get him out of it.

15 And you didn't -- so you didn't actually see
16 the incident, correct?

17 A. I did not see the incident.

18 Q. And did you see Officer Stevens cuffing
19 Mr. Guinn when he put him back in his cell?

20 A. Officer Guinn -- Inmate Guinn was in the
21 interview room when I arrived.

22 Q. Okay. So you didn't see that. You also

23 indicated to the jury that there were inmates that were

<p style="text-align: right;">125</p> <p>1 Q. So he would have been put in isolation without</p> <p>2 a hearing?</p> <p>3 A. Yes, they're put in -- on administrative</p> <p>4 transfer in the beginning.</p> <p>5 Q. Okay.</p> <p>6 A. And then if -- if the hearing officer warrants</p> <p>7 15 days isolation, then that time is credited to that --</p> <p>8 to that charge.</p> <p>9 Q. Okay. You indicated that Mr. Hill was put in</p> <p>10 the shower as a precautionary measure?</p> <p>11 A. Yes.</p> <p>12 Q. Do you have any idea where he was headed before</p> <p>13 this incident occurred?</p> <p>14 A. He was actually going to the shower.</p> <p>15 Q. Okay. So he was already going there?</p> <p>16 A. Yes.</p> <p>17 MS. WALKER: Nothing further.</p> <p>18 MS. VAN DYKE: Your Honor, nothing further of</p> <p>19 this witness.</p> <p>20 THE COURT: You may step down.</p> <p>21 THE WITNESS: Thank you.</p> <p>22 THE COURT: Do you have another witness?</p> <p>23 MS. VAN DYKE: May we approach, Your Honor?</p>	<p style="text-align: right;">127</p> <p>1 case one way or another. Avoid contact with anyone in</p> <p>2 this room. And, also, do not discuss this case with</p> <p>3 anyone, even among yourselves. Do not discuss this case</p> <p>4 with anyone.</p> <p>5 All right. Have a good evening.</p> <p>6 (Whereupon, jury leaves the room at 4:14 p.m.)</p> <p>7 THE COURT: I'm prepared at this time to</p> <p>8 address the issue of whether or not these incident</p> <p>9 reports are going to be admitted. Is that an</p> <p>10 appropriate first order of business?</p> <p>11 MS. VAN DYKE: Sure, Your Honor.</p> <p>12 THE COURT: I'd like to ask counsel whether or</p> <p>13 not Department of Corrections officers are considered</p> <p>14 law enforcement personnel.</p> <p>15 MS. WALKER: They are, Your Honor. I concede</p> <p>16 that.</p> <p>17 THE COURT: Well, if that is the case, then</p> <p>18 even though these are reports, they don't fall within</p> <p>19 the exception of 803(8) because the following are not</p> <p>20 within the exception to the hearsay rule: investigative</p> <p>21 reports by police or other law enforcement personnel.</p> <p>22 Is it your argument these are not investigative reports?</p> <p>23 MS. WALKER: That is correct, Your Honor. To</p>
<p style="text-align: right;">126</p> <p>1 THE COURT: Yes.</p> <p>2 (Whereupon, the following sidebar conference</p> <p>3 was held.)</p> <p>4 MS. VAN DYKE: At this point the State probably</p> <p>5 may decide to close its case-in-chief. I would like</p> <p>6 some time to do that, to think about whether or not I'm</p> <p>7 going to do that at this point. Also, I think probably</p> <p>8 a couple of issues have come up that I think I need to</p> <p>9 address before I can make that decision, and I don't</p> <p>10 know if we can hopefully in the time we have left</p> <p>11 address that with Your Honor. I don't know if it would</p> <p>12 be a good time to dismiss the jury.</p> <p>13 THE COURT: All right. We'll dismiss the jury</p> <p>14 for the day.</p> <p>15 MS. VAN DYKE: Thank you.</p> <p>16 (Sidebar conference was concluded.)</p> <p>17 THE COURT: Ladies and gentlemen, we have a few</p> <p>18 issues that we need to address and so you are going to</p> <p>19 be dismissed for the day. We will reconvene tomorrow</p> <p>20 morning at 10 o'clock. The bailiff will instruct you</p> <p>21 where and when to go.</p> <p>22 Again, please keep an open mind. Try as best</p>	<p style="text-align: right;">128</p> <p>1 me, the way I read that is that it would be an</p> <p>2 investigative report for the purpose of the criminal</p> <p>3 case. In this particular case, that wasn't -- that</p> <p>4 wasn't what the purpose was they filled that out. They</p> <p>5 filled it out as part of an incident report, whether</p> <p>6 administratively or criminally. And it just so happens</p> <p>7 that the State has it. They clearly weren't going to</p> <p>8 use it in their case as investigative material. So I</p> <p>9 believe that it wouldn't be -- wouldn't fall into that</p> <p>10 category.</p> <p>11 THE COURT: Well, let's assume it doesn't.</p> <p>12 It's still an out-of-court statement offered to prove</p> <p>13 the truth of the matter asserted. So which exception do</p> <p>14 you think it falls under again?</p> <p>15 MS. WALKER: Records regularly -- kept in the</p> <p>16 regular course of business, Your Honor. They testified</p> <p>17 that these are records that they actually authored</p> <p>18 themselves that they use as part of administrative</p> <p>19 procedures that are kept as part of the DCC records.</p> <p>20 THE COURT: Does the State have a position?</p> <p>21 MS. VAN DYKE: Your Honor, these are, in</p> <p>22 essence, investigative reports. It's basically what --</p>

3

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE, ID No. 0411013992

Plaintiff,

v.

TYRONE L. GUINN,

Defendant.

BEFORE: HONORABLE MARY M. JOHNSTON, J.
and jury

APPEARANCES:

CARI VAN DYKE, ESQ.
Deputy Attorney General
for the StateNICOLE WALKER, ESQ.
for the DefendantTRIAL TRANSCRIPT
MAY 20, 2005JEANNE CAHILL, RMR, CRR
SUPERIOR COURT OFFICIAL REPORTERS
500 King Street - Wilmington, Delaware 19801
(302) 255-0561

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May 20, 2005
Courtroom No. 8E
9:45 a.m.

PRESENT:

As noted.

THE COURT: Good morning.

Over last evening I'm sure you've all
thought about these issues, as I have. I also
looked for a pattern instruction on transferred
intent, and was unable to find one. I have drafted
something, should that end up being appropriate.MS. VAN DYKE: Your Honor, the State is not
going to seek a transferred intent instruction.

THE COURT: All right.

MS. VAN DYKE: That kind of closes that
issue.THE COURT: All right. So you're going to
rely on the proof of the intent to assault the law
enforcement officers?

MS. VAN DYKE: Yes.

THE COURT: And what about the defense
asking for any --MS. WALKER: Well, Your Honor, if she relies
solely on that, they either have to believe that he
intended to hit that officer to find him guilty of
that, or he's not guilty at all, so there would be
no offensive touching at all.

THE COURT: So you're not asking for that?

MS. VAN DYKE: You still have to prove
intent on an offensive touching, so it's not a
lesser-included.I'm sorry this couldn't be decided
yesterday.THE COURT: That's all right. It was
certainly interesting for me to research it,
anyway.MS. VAN DYKE: I think it's going to have
the Legislature rolling.MS. WALKER: They're probably down there
right now. That's what I was afraid of.THE COURT: It is interesting. And it is an
issue of first impression. I do think that it's
pretty clear. You cannot use transferred intent to
escalate and add a new element to a charge. I
think that's pretty clear.

4

MS. WALKER: This is kind of backward.

Usually, the State is trying to get transferred
intent.

MS. VAN DYKE: I know.

THE COURT: Was there anything else about
these instructions that we need to go over?MS. VAN DYKE: Actually, my first name is
spelled wrong.

THE COURT: How is it spelled?

MS. VAN DYKE: It's C-A-R-I. Not the
typical spelling.MS. WALKER: The Court already indicated the
"Office of the Public Defender" is coming out.

THE COURT: Yes.

MS. WALKER: The only other thing that I
noted is whether defendant's election to testifygoes in. And if we could, after the State rests,
which I believe they're going to do, and after we
have arguments with regard to -- I'd like to put on
the record officially my motions for judgment of
acquittal, if I could have an opportunity to talk
to my client one last time.

THE COURT: Normally what I do is put it in

13

1 Court.

2 Your Honor, I'd like to deal with the first
3 two counts, which I think would be based on the
4 same conduct. The State has to establish a prima
5 facie case that my client intentionally hit a
6 Correctional officer and intended to hit a
7 Correctional officer with the feces.

8 There is no argument that there was feces
9 involved here. At this point, I think they may
10 have established a prima facie case that my client
11 is the one that threw it, even though nobody saw
12 it. I think that the jury could infer that he was
13 the only one there; that he hit them.

14 However, the only testimony with respect to
15 intent that was elicited was that he, my client,
16 intended to hit Mr. Hill and not the Corrections
17 officer. None of them -- No evidence was placed on
18 the record that he intended to hit the Corrections
19 officer. It's not there.

20 Even if we don't -- the jury doesn't accept
21 their conclusions that Miss Van Dyke is going to
22 say, that's all it was, was a conclusory statement
23 by the CO's, if they take that out, then there is

14

1 nothing, there is no intent.

2 For all we know, my client could have been
3 in there just throwing the feces, not knowing
4 anybody was going to be coming up the walkway as
5 they were walking down.

6 No intent has been established at all or
7 presented to the Court with respect to those two
8 charges. So I clearly think that they haven't even
9 put forth a prima facie case with respect to that
10 element of the offense.

11 Now, on the third count, Your Honor, the
12 State has to establish a prima facie case that it
13 was my client's conscious object to cause physical
14 injury to the officer, Corrections officer.

15 Again, the only evidence that was presented
16 is the testimony of Officer Stevens that when he
17 went to take the cuffs off of my client, he pulled
18 away. And that's how -- and he hung onto the cuffs
19 because he was doing his job.

20 He didn't indicate my client pulled away
21 because he was trying to get away from the

15

1 with them at all. And in fact, they said he
2 cooperated in getting cuffed. However, he didn't
3 cooperate in being unhandcuffed.

4 The officer also testified, Your Honor, that
5 when they put them in the cell to uncuff them, they
6 are turned away from them, and they uncuff the one,
7 which is what he said happened here, and they turn
8 around and uncuff the other.

9 For all we know, Your Honor, that's all that
10 happened, and he pulled away in that respect.
11 Because nothing was presented that there was intent
12 on his part to pull in, to shake the handcuffs as a
13 weapon, to, you know, go in and get some other
14 weapon and try to hurt the officer.

15 So again, Your Honor, in both cases, this
16 comes down to intent. And in both cases, all three
17 cases, I should say, the State has failed to
18 present any evidence, any evidence, of intent by my
19 client to either strike Corrections officers or to
20 hurt or cause physical injury to an officer.

21 Therefore, Your Honor, I'm asking for a
22 judgment of acquittal on all three charges.

23 MS. VAN DYKE: Your Honor, the State would

16

1 request that you deny that motion. The standard of
2 review the Court must consider is the evidence at
3 this point must be viewed in the light most
4 favorable to the State.

5 The State presented evidence of the two
6 alleged victims in this case, Correctional Officer
7 Shannon and Correctional Officer Stevens.

8 As far as the defendant being the person
9 that committed the crimes, he's the only person in
10 the Yard 2. There is evidence that he was seen
11 holding a container, and there was feces all over
12 the fence of the yard in which he was contained.

13 As far as intent to hit the Correctional
14 officers, that intent can be inferred, and that is
15 a decision for the jury to grapple with.

16 Based upon the surrounding circumstances,
17 the close proximity that the victims were to the
18 defendant's recreation yard, the fact that Ernest
19 Hill, his alleged intended victim, is next to them
20 and he is not the closest person to the recreation
21 yard, this was a calculated plan, obviously.

22 This was something he had to think about

17

1 it intentionally at the victims. So the State does
2 believe that there is an inference that can be
3 drawn by the jury.

4 And as to Count III, it is the defendant's
5 actions that caused the injury. It is clear from
6 Officer Stevens' testimony that the defendant's
7 sudden movement caused him concern for safety, and
8 that he needed to make sure those cuffs were back
9 on the inmate. The inmate continued to struggle,
10 and that resulted in the injury.

11 Given all that, Your Honor, the State
12 believes at this point, if the Court views the
13 evidence in the light most favorable to the State,
14 the motion should be denied.

15 Thank you.

16 MS. WALKER: May I respond?

17 THE COURT: Yes.

18 MS. WALKER: With respect to Miss Van Dyke's
19 statement that the evidence has to be viewed in the
20 light most favorable to the State, she is
21 absolutely right, but they have to present evidence
22 for it to be viewed in the light most favorable to
23 that, and they haven't done that.

18

1 The intent in this case is specific intent
2 to hit a Corrections officer.

3 The sudden movement, there was no testimony
4 by the officer that he made a sudden movement and
5 that's what caused his cut. And everything he
6 testified to, it was because my client pulled away.
7 We have no idea why he pulled away. Nothing was
8 put into evidence regarding intent.

9 She also indicated it was planned and
10 calculated by my client to gather up his feces and
11 hit the officer. It may have been calculated and
12 planned to throw feces somewhere or do something
13 with it, but she has established no evidence of
14 calculation and planning.

15 THE COURT: All right. My ruling is as
16 follows: I do think that intent is a classic
17 factual question which should go to the jury. The
18 question is whether the State has established a
19 prima facie case.

20 With regard to Count III, the question is
21 whether it was the conscious object to cause
22 physical injury. There has been testimony that the

19

1 and there was testimony that his behavior deviated
2 from the normal procedure.

3 And, therefore, I think the State has
4 established a prima facie case for purposes of this
5 motion. So the motion for judgment of acquittal is
6 denied as to Count III.

7 With regard to Counts I and II, the question
8 is intent. I do agree that there is certainly a
9 question of fact raised even by the State's own
10 witnesses with regard to specific intent. However,
11 I think that under the circumstances, the intent
12 may be conferred from the proximity of the guards
13 to Inmate Hill and also the nature of the conduct
14 itself.

15 So there, the State has presented sufficient
16 evidence to survive a motion for judgment of
17 acquittal, so the motion is denied as to Counts I
18 and II as well.

19 Is there anything else we need to discuss
20 before we bring the jury in?

21 MS. VAN DYKE: No, Your Honor.

22 MS. WALKER: No, Your Honor.

23 THE COURT: All right.

20

1 MS. WALKER: Your Honor, there is one more
2 thing that I did want to address, and that is in
3 discussing with my client the evidence presented
4 and not presented by the State and explaining to
5 him his right to testify or not testify, he has
6 chosen not to testify in this case. Therefore, I
7 think the instruction as contained in the jury
8 instruction should remain.

9 THE COURT: All right. If the defendant
10 could please rise, we'll conduct that colloquy now.

11 MS. VAN DYKE: Your Honor, are they bringing
12 in the jury?

13 THE COURT: Yes. We'll have to stop them
14 when they get to the door.

15 Could the investigating officer tell them?

16 MS. WALKER: Thanks.

17 THE COURT: Mr. Guinn, your counsel has
18 informed the Court that it is your present
19 intention not to testify. Is that correct?

20 THE DEFENDANT: Yes, ma'am.

21 THE COURT: Within the last 24 hours, have
22 you taken any intoxicating substances, any drugs or

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1 the nurse?

2 A. I did. Yes, ma'am.

3 Q. Is that standard procedure?

4 A. Yes, ma'am, for injury with any contact with

5 inmates.

6 Q. That makes sense.

7 A. Yes, ma'am.

8 Q. Do you recall telling the nurse that you got

9 your hand cut trying to put cuffs on an inmate?

10 A. Trying to put them on him? No.

11 Q. Would a more accurate statement be I got my

12 hand cut trying to uncuff an inmate?

13 A. Somewhere in between there, in between the two,

14 yes, ma'am.

15 Q. Okay. So if that was put in a nurse's report,

16 that would be inaccurate?

17 A. What? What would be inaccurate?

18 Q. If it says I got my hand cut trying to put

19 cuffs on an inmate, that would be inaccurate?

20 A. I don't recall if she even asked, to be honest

21 with you.

22 Q. Okay. Did she make -- excuse me. Do you

23 recall discussing with her the fact that you had feces

90

1 on you?

2 A. No, ma'am.

3 Q. Okay. But you indicated to the jury that you

4 had an open wound. Is that correct?

5 A. Yes, ma'am.

6 Q. And that there was -- the -- to the best of

7 your knowledge, it was on your pant leg, correct?

8 A. Yes, ma'am.

9 Q. But it had splattered different places,

10 correct?

11 A. Yes, ma'am.

12 Q. And when you testified earlier that they put

13 antibiotic on you and patched you up, they gave you a

14 band-aid, correct?

15 A. Yeah, that's it.

16 Q. And you were able to return to work that time?

17 A. That evening.

18 Q. In fact, you worked overtime?

19 A. Yeah, that was my overtime shift.

20 Q. That was your overtime.

21 A. Kind of wish I didn't now, though.

22 Q. Okay. And the incident report that you filled

91

1 respect to disciplinary actions that occur at prison?

2 A. Any incident, ma'am.

3 Q. Any incident?

4 A. Yes, ma'am.

5 Q. So not just criminal matters?

6 A. No.

7 Q. And that's -- have you been taught that that's

8 the standard procedure?

9 A. For any incident?

10 Q. Yes.

11 A. Yes, ma'am.

12 Q. Okay. And what happens after you write up the

13 incident report?

14 A. You refer it to your supervisor.

15 Q. And do you turn it into them?

16 A. It's done through a computer. You refer it to

17 them, and I don't know where it goes from there, to be

18 honest with you.

19 Q. And you receive a copy of it?

20 A. Most of the time. Yes, ma'am.

21 Q. You have a copy of this one?

22 A. Yes, ma'am. I do.

23 Q. Okay. And you've had a chance to look it over

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1 and it's truthful and accurate, to the best of your

2 knowledge?

3 A. Yes, ma'am.

4 Q. And to the best of your knowledge, that is

5 exactly what you wrote in your report?

6 A. Yes, ma'am.

7 Q. Okay.

8 MS. WALKER: Your Honor, at this time I move to

9 enter the incident report into evidence.

10 THE COURT: I'll hold that decision in

11 abeyance.

12 MS. WALKER: Thank you.

13 BY MS. WALKER:

14 Q. One more thing. You also indicated that

15 Mr. Guinn took a container and threw the liquid,

16 correct?

17 A. Yes, ma'am.

18 Q. You didn't say peanut butter jug?

19 A. No, ma'am. It was similar to a peanut butter

20 jug is what it looked like.

21 Q. You didn't go get it to examine exactly what it

22 was?

69

1 Q. Did you actually see Tyrone Guinn throw
2 anything?

3 A. **No, ma'am.**

4 Q. Okay. Do you recall whether or not Ernest
5 Hill, the other inmate that you were escorting, whether
6 or not he had any feces/urine on him?

7 A. **I do not recall. I don't believe so.**

8 Q. How far away would you say Officer Shannon was
9 from the recreation yard?

10 A. **Well, on the walkway, I mean, there's only
11 maybe a space of four-feet wide to walk in between the
12 wall and the yard fence. So not far.**

13 Q. Okay. Do you recall seeing Inmate Guinn in the
14 yard?

15 A. **Yes, ma'am.**

16 Q. Okay. Do you remember seeing him at any
17 particular location at any time in the yard?

18 A. **All over it pretty much.**

19 Q. How about when you were escorting Ernest Hill,
20 did you take any particular -- pay any particular
21 attention to Tyrone Guinn at that point?

22 A. **Not until after the incident. I looked up, and
23 he was maybe three or four feet back from the fence.**

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1 Q. Okay. Three or four feet back from the fence?

2 A. **Yes, ma'am.**

3 Q. Did he have anything in his hand?

4 A. **The container.**

5 Q. Could you tell the jury what your observations
6 were of Officer Shannon, like the way he responded to
7 what happened?

8 A. **Mr. Shannon was -- he was in complete shock. I
9 mean, he was just in complete shock, probably denial
10 that he had feces and urine on his face and running --
11 dripping down his ears and hair.**

12 Q. And what about you, what were you thinking at
13 that time?

14 A. **I felt bad for him.**

15 Q. What was the thought that you had at that point
16 once you realized the incident occurred? What did you
17 do next?

18 A. **I told Mr. Shannon to take Mr. Hill to the
19 shower, secured him in there, and then I told Mr. Guinn
20 to cuff up. And he did.**

21 Q. What does "cuff up" mean?

22 A. **Back up to the flap on the yard, place his
23 hands out of it, and let me handcuff him so that we can**

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1 **take him out of the yard.**

2 Q. Okay. And he was compliant in doing that?

3 A. **Yes, he was compliant.**

4 Q. And meanwhile, where is Officer Shannon?

5 A. **Shannon, Officer Shannon, had come back to me.**

6 Q. Okay. So he had to actually go on his own with
7 Inmate Hill?

8 A. **It was only a couple more steps from where they
9 were at.**

10 Q. Okay. And was there any necessity as to why
11 you needed to cuff Tyrone Guinn at that time?

12 A. **It's just better to take care of a situation
13 right away if you can.**

14 Q. Why is that?

15 A. **This way he doesn't have time to do something
16 else.**

17 Q. You said that he was compliant in cuffing him.
18 What was your next step at that point?

19 A. **To take him out of the yard and place him back
20 in his cell.**

21 Q. And where is his cell in relation to the yard?

22 A. **Straight across, pretty much.**

23 Q. And was Officer Shannon back with you?

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1 A. **Yes, ma'am.**

2 Q. Okay. And how -- could you explain to the jury
3 the process that you went through to get Tyrone Guinn
4 back into his cell?

5 A. **I cuffed him at the flap in the yard. Removed
6 him from the yard. Brought him back to his cell. When
7 we bring him back to his cell, went to take one cuff
8 off, and he pulled away. As soon as he pulled away,
9 just restrained him. Took him down. Put the cuff back
10 on his right wrist, and then removed him from the cell,
11 and brought him out to the interview room.**

12 Q. You said "he." When you started to take the
13 cuff off of his one hand, is this occurring while he's
14 inside his cell?

15 A. **Yes, ma'am. He's at the cell, and the door's
16 maybe open this much.**

17 Q. Okay. You're able to get in through that door?

18 A. **I am? Yes, ma'am.**

19 Q. With Tyrone Guinn?

20 A. **Yes, ma'am.**

21 Q. Okay. And you say he pulls away. Well, if
22 you're undoing the cuff, could you describe how he
23 pulled away?

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1 Q. And what does the academy involve? Is that the
2 two- to three-month program?

3 A. Yes, ma'am.

4 Q. Okay. Nothing in addition to that?

5 A. No, ma'am.

6 Q. And do you recall what shift you were working
7 on June 30th, 2004?

8 A. 4 to 12 as overtime.

9 Q. What do you mean by "overtime"?

10 A. I went in at 4, the 30th, and got off at 8
11 o'clock in the morning the next day.

12 Q. Okay. So you worked more than 4 to 12?

13 A. Yes, ma'am.

14 Q. The normal shift would be from 4 to 12 and then
15 you worked beyond that?

16 A. Yes, ma'am.

17 Q. Okay. Is the 4 to 12 shift usually your shift
18 or do you have -- does --

19 A. I was on the shift for two and a half years,
20 and then I've done my past two years on 12 to 8.

21 Q. 12 midnight to 8 a.m. is your current shift?

22 A. Yes, ma'am.

23 Q. Okay. And what were your responsibilities for

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1 the shift on June 30th, 2004, the 4 to 12?

2 A. Feeding, recreation, I believe laundry that
3 day, then just routine checks.

4 Q. Okay. Did you have a partner on that shift?

5 A. Yes, I did.

6 Q. And who was that?

7 A. Officer Shannon.

8 Q. Now, is he your regular partner or --

9 A. No, ma'am.

10 Q. Okay. Do you have a regular partner or do you
11 always switch up?

12 A. Normally switch up.

13 Q. Do you recall how many cells -- I had a diagram
14 earlier. You can probably still see it on that wall
15 over there. How many inmate cells are in the tiers?

16 A. Total of 25.

17 Q. Okay.

18 A. 12 downstairs, 12 upstairs, and also a handicap
19 cell.

20 Q. Okay. Could you tell us on -- where was --
21 well, do you know Tyrone Guinn?

22 A. Do I know him? Yes, I know him.

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1 A. Just daily routine. I mean, I know him as an
2 inmate.

3 Q. You know him as an inmate?

4 A. Yes, ma'am.

5 Q. Okay. And could you tell us on June 30, 2004,
6 where he was located, where his cell was located amongst
7 the tiers?

8 A. I believe he was lower 9.

9 Q. Okay. So the lower level?

10 A. Yes, ma'am.

11 Q. The first level?

12 A. Yes, ma'am.

13 Q. And that's the same level that has 12 cells?

14 A. Yes, ma'am.

15 Q. And you believe he was in 9?

16 A. Yes, ma'am.

17 Q. And do you recall any point in time when Tyrone
18 Guinn on that specific date was removed from Cell 9?

19 A. Yes, he was removed from the cell and put into
20 Yard 2.

21 Q. Okay. And is Yard 2 directly across from Cell
22 9?

23 A. Yes, ma'am.

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1 Q. Do you recall, and if you don't recall, you
2 don't need to guess, but do you recall the approximate
3 time of when he was removed from his Cell No. 9 to Yard
4 No. 2?

5 A. I'd say approximately between 4:30 p.m. and
6 5 p.m.

7 Q. And how did you go about removing him from his
8 cell into the yard?

9 A. He's handcuffed at his cell door, then taken
10 into the yard. The yard door is shut. Then he's
11 uncuffed from inside the yard.

12 Q. Okay. And how do you accomplish the uncuffing
13 in the yard?

14 A. There's a flap on the yard fence where he
15 places his hands, and you take the cuffs off.

16 Q. Okay. And do you recall on that specific date
17 whether or not Inmate Tyrone Guinn had any personal
18 items with him?

19 A. Not that I knew of at the time.

20 Q. Okay. You don't recall whether or not he was
21 carrying anything in addition to just his regular
22 uniform, had his uniform on and that was it, that was

21

1 Q. Are you permitted to carry any weapons of any
2 sort?

3 A. No.

4 Q. Do you have any means of protection that you're
5 able to carry?

6 A. Well, other than Capstone and just handcuffs,
7 but at the time I -- it wasn't issued for everyone to
8 have caps at the time. So I didn't have caps on.

9 Q. So on June 30th you did not have caps on?

10 A. No.

11 Q. So, first, could you please explain to the jury
12 what that is?

13 A. Capstones, in other words, it's pepper spray, a
14 strong liquid made from -- it's like a direct solution
15 from cayenne peppers that can easily just swell up the
16 face or, you know, kind of -- well, basically blind a
17 person. You know what I'm saying? Not too much to
18 where they lose sight, but it's very irritating.

19 Q. Okay. Were you aware of whether or not Officer
20 Neil Stevens had --

21 A. No, he didn't.

22 Q. He did not either. Okay.

23 Was there any particular routine as far as what

22

1 inmates came out at a certain time on that date, what
2 inmates went to the yard?

3 A. Yes, it's a rotation that we have. Sometimes
4 inmates start out -- it usually starts out two cells.
5 Usually we'll start at usually 1 or 2 for that day or
6 the next day we'll start at 3 or 4. So if we have,
7 like, if we're having recreation for cells 7 to 12,
8 we'll start out either with 7, 8, and then tomorrow will
9 probably be 8 or 9 or tomorrow will be 10 or 11. So for
10 that day it was 9 and 10.

11 Q. Okay. And what -- you said you do know Tyrone
12 Guinn?

13 A. Uh-hmm.

14 Q. How do you know him?

15 A. I just know him as an inmate that was housed
16 that I used to work regularly over in Building 19.

17 Q. Okay. And do you recall having contact with
18 him as an inmate on June 30th, 2004?

19 A. Other than the incident, it was merely just
20 business. Anything -- like if I asked for did he want
21 to go out for recreation or showers or anything like
22 that, nothing more than that.

23 Q. Do you recall whether or not he did go to

23

1 recreation?

2 A. Yes, he did.

3 Q. Okay. Do you recall around what time?

4 A. Probably around --

5 Q. If you can't remember --

6 A. I can't remember. I don't want to.

7 Q. But it was during your shift which was from 4
8 to midnight?

9 A. Yes, yes.

10 Q. Okay. And do you see Tyrone Guinn in the
11 courtroom today?

12 A. Yes.

13 Q. Could you please point him out, describe an
14 article of clothing that he's wearing?

15 A. He's sitting right there with the grayish-green
16 kind of shirt on.

17 MS. VAN DYKE: Okay. Let the record reflect
18 the witness has identified the defendant, Tyrone Guinn.

19 BY MS. VAN DYKE:

20 Q. Okay. And when you took him out for recreation
21 on June 30th, 2004, what procedure did you follow and
22 who did you follow it with?

23 A. Just basically when me and Officer Stevens took

24

1 him out, had him handcuffed behind. He had his usual,
2 had the bag with his clothing, all the clothes,
3 whatever, and that was about it. And we took him to
4 Yard 2, placed him in there.

5 Q. So when you went out to recreation -- or do you
6 recall whether he went to Recreation Yard 1 or 2 on the
7 interior?

8 A. Yard 2 on the interior.

9 Q. Yard 2 on the interior?

10 A. Yes.

11 Q. So that's right near, right across from his
12 cell?

13 A. Yes.

14 Q. And you said he had a bag of clothing?

15 A. Yes.

16 Q. Okay. Could you please describe what the
17 typical uniform or jumpsuit is for a prison or inmate?

18 A. Well, usually it's an orange jumpsuit that they
19 like to wear, orange sweatshirts, because it usually
20 gets cold on a tier. Sometimes they get a combination
21 of both. And they carry out their boxers, socks,
22 t-shirt, or whatever, and probably their shower shoes,

23 shower slippers

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1 used to clean up the mess, correct?

2 A. That is correct.

3 Q. So no officer had to get down on their hands
4 and knees to clean this up, right?

5 A. We had to be on the tier with them when they
6 were doing it, especially because we had two out at the
7 same time. I was on one side of one and Sergeant
8 Percheck was on --

9 Q. Okay. So you were supervising them?

10 A. That's correct.

11 Q. But you weren't cleaning the floor?

12 A. We weren't swinging the mops, but we were
13 there.

14 Q. They were issued what you said is part of the
15 standard operating procedures, biohazard suits?

16 A. That's correct.

17 Q. And you keep these on hand because these types
18 of incidents occur, correct?

19 A. Correct.

20 MS. WALKER: I have nothing further.

21 MS. VAN DYKE: May I? Thank you.

22 REDIRECT EXAMINATION

23 BY MS. VAN DYKE:

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1 Q. You said you believe the defendant, Tyrone
2 Guinn, spent 15 days in isolation?

3 A. I believe that's typically -- when an incident
4 happens, the inmate will go for 15 days of isolation,
5 unless for some reason he gets out early, and I wouldn't
6 have that.

7 Q. Is there any other type of punishment that can
8 be imposed?

9 A. They can receive loss of all privileges, but it
10 doesn't happen until the actual hearing officer conducts
11 his hearing. They can receive loss of all privileges,
12 confinement to quarters, and/or more time in isolation
13 according to what the offense was.

14 Q. Okay. And are these like administrative
15 write-ups? I mean, how are these -- how do they get to
16 the penalty or the punishment?

17 A. When an inmate violates one of the rules that
18 are in the housing rules, if they're written up for it,
19 the write-up then goes to the hearing officer. The
20 hearing officer hears it with the inmate there. The
21 inmate gives their side of the story. The officer gives
22 their side of the story from the report, or if the
23 inmate elects to confront their accuser, they have a

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1 hearing together. And then the hearing officer directs
2 whatever discipline is going to be put in place, whether
3 it be isolation, loss of all privileges, or confinement
4 to quarters.

5 Q. And do you have any specific knowledge in
6 relation to Tyrone Guinn whether or not he had a
7 hearing?

8 A. No.

9 Q. Okay. And not just speaking about Tyrone
10 Guinn, but in other cases when there's a write-up or
11 administrative hearing, is it also that on occasions
12 that criminal charges are also filed?

13 A. That's correct.

14 Q. Who makes the decision to file criminal
15 charges?

16 A. I assume internal affairs or higher to the
17 warden.

18 Q. But with respect to this case, you're not sure
19 who decided?

20 A. I'm not sure who decided.

21 Q. Okay. Now, did you personally observe -- you
22 observed the feces on Officer Shannon?

23 A. Yes.

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1 Q. Did you also observe it on Officer Stevens?

2 A. On the back of his right leg.

3 Q. Okay. And when you collected the uniforms, you
4 noticed there was feces on the uniforms?

5 A. That's correct.

6 Q. Was there a lot?

7 A. Yes.

8 Q. Were you familiar with whether or not Ernest
9 Hill was struck with feces?

10 A. We checked Ernest Hill. Ernest Hill had no
11 feces that we could see. We still took the precaution
12 just in case and placed him in the shower so that he
13 could take a shower.

14 MS. VAN DYKE: Nothing further. Thank you.

15 MS. WALKER: Couple questions, Your Honor.

16 CROSS-EXAMINATION

17 BY MS. WALKER:

18 Q. You indicated to the prosecutor and to me that
19 you believe Mr. Guinn received 15 days in isolation?

20 A. Yes.

21 Q. But you're not aware whether or not he
22 eventually had a hearing, correct?

23 A. Not that I recall.

313 , 2005

N. M. WALKER

TYRONE L. GUINN,
 Defendant Below,
 Appellant,
 v.

T. J. DONOVAN

STATE OF DELAWARE,
 Plaintiff Below,
 Appellee.

DF \$ 00.00

2005

- 1 Jul 13 Notice of appeal from the convictions and sentence imposed on 07/01/05 in the Superior Court in and for New Castle County, by Judge Johnston, in Cr. A. No. IN04111482, I.D. #0411013992, with designation of transcript. (served by hand 7/13/05) (mfm)
- 2 Jul 13 Directions to court reporter of proceedings below to be transcribed pursuant to Rule 9(e) by appellant. (service shown on court reporter by hand 7/13/05) (mfm)
- 3 Jul 15 Letter dated 7/15/05 from Chief Deputy Clerk to Kathleen Feldman, transcript is due to be filed by 8/22/05. (dlw)
- 4 Jul 15 Letter dated 7/15/05 from Chief Deputy Clerk to Nicole M. Walker, Esquire, requesting a copy of Judge Johnston's 7/1/05 sentencing order be filed to be attached to the notice of appeal upon her receipt. (dlw)
- 5 Jul 25 Letter dated 7/22/05 from Nicole M. Walker, Assistant Public Defender to Clerk, enclosing sentencing order being appealed. (service shown) (rdd).
- 6 Aug 24 Court reporter's final transcript log entry: Prothonotary received 8/17/05. (eas)
- 7 Aug 24 Letter dated 8/24/05 from Senior Court Clerk to Prothonotary, record is due to be filed by 8/31/05. (eas)
- * 8 Aug 25 Record w/ transcript. (eas)
- * 9 Aug 25 Brief schedule issued. (opening brief due 9/26/05) (eas)
- * 10 Sep 23 Appellant's opening brief and appendix. (served by hand 9/23/05) (mjd)
- * 11 Oct 18 Affidavit requesting to proceed pro se pursuant to Rule 26(d)(iii). (no service shown) (mjd)

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12 Oct 18 Directions to court reporter of proceedings below to be transcribed pursuant to Rule 9(e) by appellant. (no service shown on the court reporter) (mjd)

13 Oct 20 Letter dated 10/20/05 from Chief Deputy Clerk to Nicole M. Walker, Esquire, forwarding the appellant's documents filed on 10/17/05. (dlw)

14 Oct 26 Brief delinquency notice dated 10/26/05 from Clerk to appellee. (clh)

15 Oct 26 Motion for leave to file answering brief out of time by appellee. (served by hand 10/26/05) (mjd)

16 Oct 28 Additional transcript to be made part of the record. (eas)

17 Nov 01 Order dated 10/31/05 by Steele, C.J., appellee's answering brief is due 11/23/05 (afb).

18 Nov 18 Letter dated 11/15/05 from Tyrone Guinn to Court, regarding his appeal. (mjd)

19 Nov 22 Appellee's answering brief. (served by hand 11/22/05) (mjd)

20 Nov 22 Letter dated 11/22/05 from Assistant Clerk to Nicole M. Walker, Esq., forwarding Mr. Guinn's 11/15/05 letter for appropriate disposition (afb).

21 Nov 22 Notice dated 11-22-05 from Clerk to counsel, the case will be submitted for decision on briefs as of 12-21-05 (clh) (MTS,CB,JBJ)

* 22 Dec 05 Appellant's reply brief. (served by hand 12/5/05) (mfm)
2006

23 Feb 14 Letter dated 2/14/06 from Tyrone Guinn to Clerk, regarding his appeal. (eas)

24 Feb 14 Letter dated 2/14/06 from Senior Court Clerk to Nicole Walker, Esquire, forwarding Mr. Guinn's letter for appropriate disposition. (eas)

25 Feb 22 Letter dated 2/18/06 from Tyrone Guinn to Clerk, regarding his appeal. (eas)

26 Feb 22 Letter dated 2/22/06 from Senior Court Clerk to Nicole Walker, Esquire, forwarding Mr. Guinn's letter for appropriate disposition. (eas)

27 Feb 28 Order dated 2/28/06 by Steele, C.J., AFFIRMED. (MTS,CB,JBJ) (eas)

28 Mar 13 Letter dated 3/1/06 from Tyrone Guinn to Clerk, inquiring as to the status of his appeal. (docket sent) (eas)

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* 29 Mar 16

Record and mandate to clerk of court below. Case Closed
(afb).

30 Mar 20

Letter dated 3/11/06 from appellant to Clerk requesting
a copy of the docket sheet and the name of his counsel
(sent) (afb).

B-3

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE

VS.

TYRONE L GUINN

Alias: See attached list of alias names.

DOB: 11/12/1984

SBI: 00375731

CASE NUMBER:

0411013992

CRIMINAL ACTION NUMBER:

IN04-11-1483

ASSLT DET FACIL(F)

SENTENCE ORDER

NOW THIS 1ST DAY OF JULY, 2005, IT IS THE ORDER OF THE COURT THAT:

The defendant is adjudged guilty of the offense(s) charged. The defendant is to pay the costs of prosecution and all statutory surcharges.

AS TO IN04-11-1483- : TIS
ASSLT DET FACIL

Effective July 1, 2005 the defendant is sentenced as follows:

- The defendant is placed in the custody of the Department of Correction for 8 year(s) at supervision level 5 with credit for 4 month(s) 12 day(s) previously served

- Suspended after serving 3 year(s) at supervision level 5

- For 3 year(s) supervision level 4 HALFWAY HOUSE

- Suspended after serving 1 year(s) at supervision level 4 HALFWAY HOUSE

- For 2 year(s) supervision level 3

- Hold at supervision level 5

APPROVED ORDER 1 August 4, 2005 12:08

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STATE OF DELAWARE
VS.
TYRONE L GUINN
DOB: 11/12/1984
SBI: 00375731

- Until space is available at supervision level 4 HALFWAY
HOUSE

The first 1 years of this sentence is a mandatory term
of incarceration pursuant to DE11 1254FD .

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PUBLIC DEFENDER OF THE STATE OF DELAWARE
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820 NORTH FRENCH STREET, THIRD FLOOR
P.O. BOX 8911
WILMINGTON, DELAWARE 19801

LAWRENCE M. SULLIVAN
PUBLIC DEFENDER

NICOLE M. WALKER
ASSISTANT PUBLIC DEFENDER

ANGELO FALASCA
CHIEF DEPUTY

TELEPHONE
(302) 577-5121

March 16, 2005

Mr. Tyrone Guinn
SBI#375731
H.R.Y.C.I.
1301 East 12th Street
Wilmington, DE 19809

RE: State v. Tyrone Guinn
ID#0411013992

Dear Mr. Guinn:

This responds to your letter to our office dated March 4, 2005.

First, I have to say that I am puzzled by your concerns. I have already met with you by video on two occasions to discuss your case. Also, you did give me names of potential witnesses. As I told you I would do, I had those witnesses interviewed by my investigator and have issued the appropriate subpoenas. At no time did I say this would not help your case. I simply explained the different ways the jury may perceive this defense.

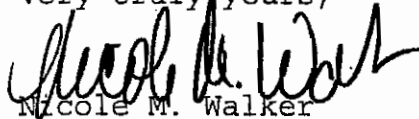
Second, we have discussed, during our video conferences, the discovery that I have received by the State on your behalf. You did not request this information from me on any occasion we have met. However, to address your concerns, I have enclosed it for you.

Finally, you may not have received my direct phone number simply because you had previously been assigned to another attorney and, thus, it was an oversight. You will find my number

at the top of this letter. However, you have sent me letters, which I reviewed immediately upon receipt.

If you have any further concerns regarding your case, as usual, I will be happy to discuss them.

Very truly yours,



Nicole M. Walker

Assistant Public Defender

MMW:dab

D:-2

IN THE SUPREME COURT OF THE STATE OF DELAWARE

TYRONE GUINN,

Defendant Below-
Appellant,

v.

STATE OF DELAWARE,

Plaintiff Below-
Appellee.

§
§ No. 228, 2007
§
§
§ Court Below—Superior Court
§ of the State of Delaware
§ in and for New Castle County
§ Cr. ID No. 0411013992
§
§
§

Submitted: August 10, 2007

Decided: September 21, 2007

Before **HOLLAND, BERGER** and **JACOBS**, Justices

ORDER

This 21st day of September 2007, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) The defendant-appellant, Tyrone Guinn, filed an appeal from the Superior Court's April 17, 2007 order denying his motion for postconviction relief pursuant to Superior Court Criminal Rule 61. We find no merit to the appeal. Accordingly, we AFFIRM.

(2) In May 2005, Guinn was found guilty by a Superior Court jury of Assault in a Detention Facility. He was sentenced to 8 years of Level V incarceration, to be suspended after 3 years for 4 years of decreasing

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NOW, THEREFORE, IT IS ORDERED that the judgment of the
Superior Court is AFFIRMED.

BY THE COURT:

/s/ Carolyn Berger
Justice

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